UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION FOUR

STERICYCLE, INC.

and **Cases 04-CA-137660,**
04-CA-145466,
04-CA-158277 and
04-CA-160621

TEAMSTERS LOCAL 628

COUNSEL FOR THE GENERAL COUNSEL'S BRIEF TO THE ADMINISTRATIVE LAW JUDGE

Dated: October 7, 2016

LEA F. ALVO-SADIKY
CHRISTINA GUBITOSA
Counsel for the General Counsel
National Labor Relations Board
Fourth Region
One Independence Mall
615 Chestnut Street, Suite 710
Philadelphia, PA 19106-4413
215-597-7630

I. STATEMENT OF THE CASE **1**

II. STATEMENT OF THE ISSUES **4**

III. STATEMENT OF FACTS **4**

A. BACKGROUND 4

B. THE HEALTH INSURANCE RECOUPMENT AND INFORMATION REQUESTS ON THE RECOUPMENT 5

C. THE 401(K) REQUESTS FOR INFORMATION 12

D. THE EBOLA INFORMATION REQUEST AND HANDBOOK REQUEST 17

E. THE VEHICLE BACKING PROGRAM INFORMATION REQUEST 19

F. THE SOUBRA GRIEVANCE INFORMATION REQUEST 21

G. THE TMX INFORMATION REQUEST 24

H. THE NEW HANDBOOK AT MORGANTOWN 26

I. THE UNLAWFUL OVERBROAD POLICIES 27

IV. ARGUMENT **29**

A. RESPONDENT VIOLATED SECTION 8(A)(5) OF THE ACT BY UNILATERALLY IMPOSING A RECOUPMENT OF HEALTH INSURANCE DEDUCTIONS WITHOUT FIRST NOTIFYING AND BARGAINING WITH THE UNION. 29

B. RESPONDENT VIOLATED SECTION 8(A)(1) AND (5) OF THE ACT BY IMPLEMENTING A NEW HANDBOOK IN THE MORGANTOWN FACILITY WITHOUT NOTIFYING AND BARGAINING WITH THE UNION 33

C. RESPONDENT VIOLATED SECTION 8(A)(1) AND (5) OF THE ACT BY FAILING AND REFUSING TO PROVIDE RELEVANT INFORMATION TO THE UNION 35

1. The Legal Standard *35*

2. The Recoupment Information Requests *37*

3. The 401(k) Information Requests *39*

4. The November 13 and 18, 2014 Ebola Training Information Request *45*

6. The November 24 2014 ,Vehicle Backing Program Information Request *47*

7. Information Related to the Soubra Grievance *48*

9. Information Relating to the TMX Meeting *52*

D. RESPONDENTS' OVERBROAD POLICIES VIOLATE SECTION 8(A)(1) OF THE ACT 53

1. Applicable Legal Standards *53*

2. ***Camera and Video Use Policy*** *54*

3. Use of Personal Electronics in the Workplace Policy *57*

4. Retaliation Policy *58*

5. Electronic Communication Policy *59*

6. Use of Personal Electronics Policy (Handbook) *60*
7. Personal Conduct Policy *60*
8. Conflict of Interest Policy *62*
9. Proposed Remedy For Policy Violations *63*
V. CONCLUSION AND REMEDIES 63
APPENDIX A—TO BE POSTED AT THE SOUTHAMPTON AND MORGANTOWN FACILITIES 65
APPENDIX B—TO BE POSTED NATIONWIDE 68

CASES

A.S. Asbell Company, 230 NLRB 1112 (1977) ---------- 50, 58
Aeolian Corp., 247 NLRB 1231 (1980)----------40
Alexander Linn Hospital Association, 288 NLRB 103 (1988) ----------33
Allied Aviation Fueling of Dallas, 347 NLRB 248 (2006)----------35
American Telephone & Telegraph Co., 250 NLRB 47 (1980) ----------51
Anheuser-Bush, Inc., 237 NLRB 982 (1978)----------55
A-Plus Roofing, 295 NLRB 967 (1989), enf'd 39 F.3d 1410 (9th Cir. 1994)----------38
ATC/Vancom of Nevada Ltd., 326 NLRB 1432 (1998)----------38
Atlantis Health Care Group, 356 NLRB 140 (2010) ----------31
Battle's Transportation, Inc., 362 NLRB No. 17 (2015) ----------66
Bituminous Roadways of Colorado, 314 NLRB 1010 (1994) ----------40
Boyertown Packaging Corp., 303 NLRB 441 (1991)----------54
Bridge, Structural & Ornamental Ironworkers Local 207 (Steel Erecting Contractors), 319 NLRB 87 (1995)----------39
Bryant & Stratton Business Institute, 323 NLRB 410 (1997) ----------42
Bud Antle, 361 NLRB No. 87 (2014) incorporating by reference 359 NLRB 1257 (2013)-------39
Bundy Corp., 292 NLRB 671 (1989)---------- 40, 54
Burgess Medical Center, 342 NLRB 1105 (2004) ----------49
Capitol Steel & Iron Co., 317 NLRB 809 (1995) ----------40
Carpenters Local 1031, 321 NLRB 30 (1996)----------31
Casino San Pablo, 361 NLRB No. 148 (2014). ----------69
C*astle Hill Health Care Center*, 355 NLRB 1156 (2010)----------30
Chesapeake & Potomac, 259 NLRB 225 (1981), enfd. 687 F.2d 633 (2d Cir. 1982) -------- 47, 48
Ciba-Geigy Pharmaceuticals Division, 264 NLRB 1013 (1982), enfd. 722 F.2d 1120 (3d Cir. 1983) ----------30
Cintas Corp., 344 NLRB 943 (2005), enfd. 482 F.3d 463 (D.C. Cir. 2007).----------66
Coca-Cola Bottling Co., 311 NLRB 424 (1993) ----------37
Columbia College Chicago, 360 NLRB No. 122 (2014)----------44
Contract Carriers Corp., 339 NLRB 851 (2003)----------37
Costco Wholesale Corp., 358 NLRB No. 106 (2012)----------61
Dearborn Country Club, 298 NLRB 915 (1990)----------34
Detroit Edison Co. v. NLRB, 440 U.S. 301 (1979)---------- 37, 38

Detroit Newspaper Agency, 317 NLRB 1071 (1995) ----------39, 43, 44

DirecTV U.S. DirecTV Holdings, LLC, 359 NLRB 545 (2013), reaffirmed and incorporated by reference, 362 NLRB No. 48 (2015) ---------- 66, 68

Disneyland Park, 350 NLRB 1256 (2007) ----------56

Dorsey Trailers, Inc., 327 NLRB 835 (1999), enfd. in part and denied in part 233 F.3d 831 (4th Cir. 2000)----------33

Double D Construction Group, Inc., 339 NLRB 303 (2003) ----------61

Dynatron/Bondo Corp., 324 NLRB 572 (1997) ----------35

Eagle Transport Corp., 338 NLRB 489 (2002)----------32

Fairmont Hotel Co., 304 NLRB 746 (1991) ----------54

Fleming Cos., 332 NLRB 1086 (2000) ---------- 47, 48

Ford Motor Co. v. NLRB, 441 U.S. 488 (1979) ----------30

*Fresenius USA Mfg., Inc***.**, 362 NLRB No. 130, slip op at 2 (2015)----------67

Fresh & Easy Neighborhood Market, 361 NLRB No. 8 (2014) ----------66

General Dynamics Corp., 268 NLRB 1432, 1432 (1984)----------44

General Electric Co., 290 NLRB 1138 (1988) ----------43

Grand Rapids Press, 331 NLRB 296 (2000)----------37

Guardsmark, LLC v. NLRB, 475 F.3d 369 (D.C. Cir. 2007)----------72

Guardsmark, LLC, 344 NLRB 809 (2005), enfd. in relevant part 475 F.3d 369 (D.C. Cir. 2007) ----------72

Hawaii Tribune-Herald, 356 NLRB 661 (2011), enfd. sub. nom. *Stephens Media, LLC v. NLRB*, 677 F.3d 1241 (D.C. Cir. 2012)----------62

Hospital of Bartow, Inc., 361 NLRB No. 34 (2014) ----------50, 52, 57

HTH Corp., 356 NLRB 1397 (2011), enfd. 693 F.3d 1051 (9th Cir. 2012) ----------71

Hyundai America Shipping, 357 NLRB 860 (2011), enfd. in part 805 F.3d 309 (D.C. Cir. 2015) ----------66

Intersystems Design Corp., 278 NLRB 759 (1986) ----------31

Jewish Federation Council, 306 NLRB 507 (1992) ---------- 47, 48

Jordan Marsh Stores Corp., 317 NLRB 460 (1995)----------62

JPH Management, Inc., 337 NLRB 72 (2001)---------- 30, 31

Karl Knauz Motors, Inc., 358 NLRB 1754 (2012) ----------36, 61, 71

Kinder-Care Learning Centers, Inc., 299 NLRB 1171 (1990) ---------- 67, 68

King Scoopers, Inc., 332 NLRB 23 (2000)----------46

Lafayette Park Hotel, 326 NLRB 824 (1998), enfd. mem., 203 F.3d 52 (D.C. Cir. 1999) -- 60, 69, 70
Laidlaw Waste Systems, 307 NLRB 1211 (1992) ----------51
Lansing Automakers Federal Credit Union, 355 NLRB 1345 (2010)---------- 47, 48
Laro Maintenance Corp., 333 NLRB 958 (2001) ----------32
Lasher Service Corp., 332 NLRB 834 (2000) ----------39
Living and Learning Centers, Inc., 251 NLRB 284 (1980) ----------58
Lutheran Heritage Village-Livonia, 343 NLRB 646 (2004)---------- 60, 61, 70, 71
Marshalltown Trowel Co., 293 NLRB 693 (1989)----------37
Mastec Advanced Technologies, 357 NLRB 103 (2011)----------72
Mission Foods, 345 NLRB 788 (2005) ----------38, 39, 42
New England Telephone Co., 309 NLRB 196 (1992) ----------45
NLRB v Acme Industrial Co., 385 U.S. 432 (1967) ---------- 37, 45
NLRB v. Katz, 369 U.S. 736 (1962) ---------- 30, 34
Norris I O'Bannon, 307 NLRB 1236 (1992) ---------- 36, 61
Northern Indiana Public Service Co., 347 NLRB 210 (2006)----------55
Ohio Power Co., 216 NLRB 987 (1975)---------- 37, 41
Oncor Elec. Delivery Co., LLC, 364 NLRB No. 58 (2016)---------- 48, 56
Ormet Aluminum Mill Products Corporation, 335 NLRB 788 (2001)---------- 38, 48
Palms Hotel and Casino, 344 NLRB 1363 (2005) ---------- 60, 61
Pennsylvania Power Co., 301 NLRB 1104 (1991)---------- 38, 49
Piedmont Gardens, 362 NLRB No. 139 (2015) ----------55
Pontiac Osteopath Hospital, 336 NLRB 1021 (2001)----------30
Postal Service, 308 NLRB 547 (1992)----------53
Postal Service, 310 NLRB 391 (1993)----------56
Postal Service, 332 NLRB 635 (2000)---------- 40, 44
Purple Communications, 361 NLRB No. 126 (2014)---------- 68, 69
Rio All-Suites Hotel & Casino, 362 NLRB No. 190 (2015) ----------63
S & I Transportation, Inc., 311 NLRB 1388 (1993) ----------30, 32, 34
Safeway Stores, Inc., 236 NLRB 1126 (1978), enfd. 622 F.2d 425 (9th Cir. 1980), cert. denied 450 U.S. 913 (1981) ----------46
Samaritan Medical Center, 319 NLRB 392 (1995)----------40
San Diego Guild v. NLRB 548 F. 2d 863 (9th Cir. 1977) ----------37

Southern California Gas Company, 346 NLRB 449 (2006) ----------50, 52, 57
Stella Doro Biscuit Company, Inc., 355 NLRB 769 (2010)----------51, 58, 59
Strategic Resources, 364 NLRB No. 42 (2016) ----------52
Taylor Forge & Pipe Works, 113 NLRB 693 (1955) ----------43
T-Mobile USA, Inc., 363 NLRB No. 171 (2016) ----------62, 64, 65
Toledo Blade Co., 343 NLRB 385 (2004) ----------34
Transport of New Jersey, 233 NLRB 694 (1977) ----------54
Tritac Corp., 286 NLRB 522 (1987) ----------40
Union Switch & Signal, 316 NLRB 1025 (1995)---------- 51, 57
United Cerebral Palsy of New York City, 347 NLRB 603 (2006) ---------- 34, 35
University Medical Center, 335 NLRB 1318 (2001) ----------61
USC University Hospital, 358 NLRB 1205 (2011) ----------30
Washington Gas Light Co., 273 NLRB 116 (1984)---------- 38, 39
White Oak Manor, 353 NLRB 795 (2009), incorporated by reference, 355 NLRB 1280 (2010), enfd. mem. 452 F.App'x 374 (4th Cir. 2011) ----------62
Whole Foods Market, Inc., 363 NLRB No. 87, (2015) ---------- 63, 65
Woodland Clinic, 331 NLRB 735 (2000)----------40

I. STATEMENT OF THE CASE

This case involves two bargaining units of employees represented by Teamsters Local 628, herein called the Union, who work in a waste treatment center in Morgantown, Pennsylvania and a transfer station facility in Southampton, Pennsylvania. Following ratification of a new collective bargaining agreement at the Southampton facility, Stericycle, Inc., herein Respondent, unilaterally recouped health care premiums from employee paychecks without notice or bargaining with the Union. Respondent then repeatedly refused to provide information relevant and necessary to the Union's performance of its representation functions at both facilities. Meanwhile, at the Morgantown facility, Respondent unilaterally imposed a team member handbook that changed numerous terms and conditions of employment including those specified in the collective bargaining agreement. Lastly, Respondent has maintained policies, both separately and in a handbook that contains numerous rules and policies that interfere with employees' Section 7 rights.

The Union responded to Respondent's actions by filing unfair labor practice charges in Cases 04-CA-137660, 04-CA-145466, 04-CA-158277, 04-CA-160621 and 04-CA-161145 on September 29, 2014, January 30, 2015, August 18, 2015, September 23, 2015 and October 1, 2015, respectively. (GCX1(a),(e),(t),(v),(x)).[1]

[1] Throughout this brief references to the transcript and exhibits will be as follows:

Transcript……T	(followed by page number)
General Counsel's Exhibit……..GCX	(followed by exhibit number)
Respondent's Exhibit……..RX	(followed by exhibit number)
Charging Party's Exhibit…….CPX	(followed by exhibit number)
Administrative Law Judge Exhibit. …JX	(followed by exhibit number)

The Regional Director issued a Complaint and Notice of Hearing in Case 04-CA-137660, on January 27, 2015 (GCX-1(c)), and an Erratum on February 3, 2015 (GCX-1(g)). The Acting Regional Director issued an Amended Complaint in Case 04-CA-137660, on February 4, 2015 (GCX-1(i)). Respondent filed an Answer to the Amended Complaint on February 17, 2015. (GCX-1(k)) In response to Respondent's Request for Postponement of Hearing dated March 20, 2015 (GCX-1(l)), the Regional Director issued an Order Rescheduling Hearing on March 24, 2015. (GCX-1(m)) The Regional Director issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing in Cases 04-CA-137660 and 04-CA-145466 on April 3, 2015. (GCX-1(o)) Respondent filed an Answer to the Consolidated Complaint on April 15, 2015. (GCX-1(q)) On April 20, 2015, the Acting Regional Director issued an Order Postponing Hearing Indefinitely in Cases 04-CA-137660 and 04-CA-145466. (GCX-1(r))

The Acting Regional Director issued an Order Further Consolidating Cases, Second Consolidated Complaint and Notice of Hearing in Cases 04-CA-137660, 04-CA-145466, 04-CA-158277, 04-CA-160621 and 04-CA-161145 on March 29, 2016. (GCX-1(dd)) The Second Consolidated Complaint alleged that Respondent has been engaging in conduct in violation of Section 8(a)(1) and (5) of the Act. Respondent filed an Answer to the Second Consolidated Complaint on April 12, 2015. (GCX-1(ff))

On May 10, 2016, Respondent filed a Request to General Counsel to Transfer Case to a Different Region for Reinvestigation, Reconsideration, and Further Processing as Deemed Appropriate. (GCX-1(gg)) On May 13, 2016, the Acting Regional Director issued Amendments to Second Consolidated Complaint in Cases 04-CA-137660, 04-CA-145466, 04-CA-158277, and 04-CA-160621. (GCX-1(hh)) The Charging Party filed a Response in Opposition to Respondent's Request to Transfer Case to a Different Region on May 16, 2016. (GCX-1(kk))

Counsel for General Counsel filed a Motion in Limine on May 16, 2016. (GCX-1(ll)) Respondent filed a Motion to Dismiss and Response to General Counsel's Motion in Limine on May 19, 2016. (GCX-1(mm))

As a result of the parties' discussions with Chief Administrative Law Judge Giannassi, on May 23, 2016, the Regional Director issued an Order Rescheduling Hearing. (GCX-1(nn)). On May 26, 2016, Respondent filed an Answer to Amendments to Second Consolidated Complaint. (GCX-1(pp)) In its Answers to the Second Consolidated Complaint and Amendments to Second Consolidated Complaint, Respondent admits the filing and services of the instant unfair labor practice charges, being engaged in commerce, the Union's labor organization status, the individuals alleged to be supervisors and agents of Respondent, that the Southampton and Morgantown Units as set forth in the Second Consolidated Complaint are appropriate and that the Union is the exclusive collective bargaining representative of the employees in the two Units. Respondent further admits that the Union requested certain information specified in the Second Consolidated Complaint. As to the alleged violations of the Act, Respondent denies having engaged in any conduct in violation of the Act. Respondent also asserted several affirmative defenses.

Respondent filed a Motion to Dismiss Complaint to the Board on June 29, 2016. (GCX-1(qq)) The Charging Party filed a Response in Opposition to Respondent's Motion to Dismiss Complaint on August 1, 2016. (GCX-1(rr)) Counsel for General Counsel filed an Opposition to Respondent's Motion to Dismiss Complaint Without Prejudice on August 3, 2016. (GCX-1(ll)) A Referral of Motion to Dismiss Complaints to the NLRB Division of Judges was ordered by the Board on August 19, 2016. (GCX-1(tt)) By letter dated August 23, 2016, the General Counsel denied Respondent's Motion to Transfer Case. (GCX-1(uu))

On August 24, 2016, Administrative Law Judge Michael A. Rosas issued an Order Denying Respondent's Motion to Dismiss the Complaint and Denying the General Counsel's Motion in Limine.[2] (GCX1-(vv))

A hearing in this matter was held before Administrative Law Judge Rosas on August 24 and 25, 2016. At the hearing, Counsel for the General Counsel amended the Second Consolidated Complaint to eliminate paragraphs 8(b) and 11 of the Complaint. (T. 8, 28-29)

This brief is filed in support of the remaining allegations of the Amended Second Consolidated Complaint.

II. STATEMENT OF THE ISSUES

A. Whether Respondent violated Section 8(a)(5) by unilaterally implementing a method of recouping health insurance costs from Southampton unit employees' pay?

B. Whether Respondent violated Section 8(a)(5) by unilaterally implementing a handbook that contained different terms and conditions for Morgantown unit employees.

C. Whether Respondent violated Section 8(a)(5) by refusing to provide certain necessary and relevant information to the Union?

D. Whether Respondent violated Section 8(a)(1) by maintaining certain policies?

III. STATEMENT OF FACTS

A. Background

Respondent is the largest medical waste disposal company in the United States. It picks up regulated medical waste such as bandages, bodily fluids, and sharp containers of needles, from hospitals, nursing homes, doctors' offices, dentists' offices, and veterinarian offices. (T. 34) Respondent operates a waste treatment facility that handles the collection, processing and

[2] For the reasons stated in the General Counsel's Motion in Limine and Opposition to Respondent's Motion to Dismiss Complaints Without Prejudice, Counsel for General Counsel respectfully requests that the Administrative Law Judge reconsider his ruling and grant the Motion in Limine to strike Respondent's eighth affirmative defense.

disposal of medical waste from its Morgantown, PA facility. It also has a transfer station facility in Southampton, Pennsylvania, where drivers pick up trash which is then consolidated and brought to the Morgantown facility. (T. 35-36) The Union represents employees at both of these facilities. (T. 33, 35)

At Southampton, the Union represents a unit of approximately 105 employees, which includes drivers, driver techs, in-house techs, helpers, and dock workers. The Union was certified on September 1, 2006. (GCX-1(dd),(ff); GCX-2; T. 33, 34) The most recent collective bargaining agreement between Respondent and the Union for Southampton unit employees was ratified on April 13, 2014 and expires on October 31, 2016. (GCX-2; T. 35, 112)

At Morgantown, the Union represents approximately 55 employees, which includes drivers, plant workers, maintenance mechanics, painters, dispatchers, and leaders. The Morgantown unit was certified on September 1, 2011. (GCX-1(dd),(ff); GCX-3; T. 36) Respondent and the Union were parties to an initial collective bargaining agreement that expired on February 29, 2016. (GCX-3; T. 37) A new collective bargaining agreement was ratified recently in June 2016. (T. 37)

B. The Health Insurance Recoupment and Information Requests on the Recoupment

The 2014 Southampton collective bargaining agreement provided for the first time that Southampton unit employees would be required to make contributions towards their health insurance. (T. 38, 112) Article 22.3 provides, in pertinent part:

> Upon ratification, employees will contribute on a pre-tax basis one (1%) of their straight time hours paid per week to the cost of health coverage. The employer shall deduct this amount bi-weekly … (GCX-2)

Despite this language, which appeared in the parties' contract for the first time, Respondent and its outside payroll company had difficulty making this new deduction come off employees' pay

properly. As a result, Respondent did not make these deductions from employee pay in the pay periods immediately following ratification. (T. 38, 113, 114, 130, 189, 254)

In June, July and August 2014, Union Secretary Treasurer John Dagle discussed with William Reiss, Southampton Facility Manager, both in person and on the phone, that Respondent had not made the deductions. At first, Reiss was not aware of why there was a delay in deducting the one percent health insurance cost from employees' pay. (T. 39, 114) In late June or July 2014, Reiss explained that there was an issue with the payroll process. (T. 114) Dagle told Reiss that the Union's position was that since Respondent had failed to deduct the health insurance contributions, Respondent had forfeited the right to make those deductions and then, in the alternative, if employees had to pay the amounts retroactively, the parties would have to negotiate how Respondent was going to recoup those monies. (T. 39) In response, Reiss told Dagle, "I've told them not to make any retro deductions" until he had an agreement with the Union.[3] (T. 39)

Previously, the parties had negotiated at least twice concerning how monies would be recouped from employees' pay. In 2013, the parties had negotiated how employees who had been mistakenly paid twice for their personal time would pay that money back.[4] The parties also negotiated about a Union dues mistake that affected a lot of employees. Dagle and Reiss discussed the number of pay periods for the recoupment and when it would start, in advance of any deductions being taken out of employees' paychecks. (T. 40, 195, 198-199, 308)

[3] Reiss' testimony to the contrary should not be credited. Reiss testified that prior to September 2014, the subject of recoupment did not come up and nor did Dagle state that Respondent would have to bargain about it. Reiss' testimony on this area was elicited in leading questions and was not as detailed as Dagle's testimony concerning the subject. (T. 189-190)

[4] Although Reiss claimed not to remember negotiating with Dagle over the recoupment of monies paid out for personal leave, Carole Fox, Labor Relations Manager, recalled the incident. (T. 197, 308)

Nonetheless, by email dated September 3, 2014, Reiss notified Dagle that Respondent had completed the testing for the payroll code for Article 22.3 and that Respondent planned to deduct the amounts as shown in an attached spreadsheet evenly over the next three pay days for each employee, starting with the September 12, 2014 payday. (GCX-4; RX-1, p. 1; T. 40-41, 192, 199) The decision to recoup the money, the amounts from employees, the number of pay periods and when it would begin, were all made prior to Reiss notifying the Union. (T. 200) At the time Reiss notified Dagle, Respondent's payroll would have been submitted by the following Monday, September 8, 2014. (T. 117, 124) On September 4 or 5, 2014, Dagle had a phone conversation with Reiss where he objected to Respondent's unilateral decision to recoup the health care deductions as a violation of the contract and requested to bargain. Dagle also sent an email dated September 5, 2014 stating the Union's opposition to Respondent's unilateral decision to recoup unpaid health care deductions. (GCX-4; RX-1, p. 5; T. 41, 120-121,192, 199)

By email dated September 8, 2014, Reiss responded, in pertinent part:

> As you know, for the past few months employees have been receiving health benefits (and the Union's Health and Welfare fund, the contributions required under Article 22) without interruption, however, the employees have not been making their contribution due to some administrative issues on our end. Nonetheless, the employees have an obligation under the CBA to make their l % contributions and there is nothing in the contract that prevents the Company from making catch up contributions to collect what they are legally obligated to pay. (RX-1, p. 8)

Dagle responded by email and fax dated September 9, 2014, in pertinent part:

> Stericycle failed to exercise its rights under the agreement. Moreover, Stericycle's decision to unilaterally deduct from employees' bi-weekly paychecks contributions retroactively for a seventeen week period (4/13/14 through 8/9/14) over the next six weeks is a violation of the company's obligations under the Collective Bargaining Agreement. For those six weeks, Stericycle will pay its employees at rates below those expressly required by the agreement. The Union will forward a grievance regarding this matter under separate cover.

> Any employee medical contribution recoupment schedule must be negotiated with the Union. Stericycle does not have the legal right to unilaterally impose its own schedule.
>
> As a precondition for bargaining, Stericycle must first rescind its decision to commence recoupment and forgo any further action pending agreement. Once the recoupment decision is rescinded, the union will, without prejudice to its position on the grievance, negotiate on this this matter on September 23, or September 29, 2014. Please contact me to schedule negotiations. (RX-1, p. 9; T. 124,193)

On September 10, 2014, Dagle, Harry Banks, shop steward, and Reiss met to discuss a grievance on another matter. During that meeting, they discussed the health insurance recoupment. Dagle protested, "Why the sudden change? I thought we were going to negotiate this." Reiss responded that Respondent was not obligated to negotiate it and that's why it was executing its recoupment plan. Dagle responded that Respondent was absolutely required to negotiate it. He stated, "We want the status quo to remain, and let's sit down and negotiate it." Reiss said that he needed five minutes to call his corporate headquarters. Dagle and Banks went outside to wait. Reiss came out and said Respondent was not agreeable to maintaining the status quo and was going forward with its recoupment plan of taking it out of the next three paychecks.[5] (T. 40-41) Reiss offered to talk about the next two payments. (T. 194)

On cross examination, Dagle acknowledged that Reiss was willing to discuss the next two deductions but characterized it as "too little too late." (T. 127) Dagle testified that if Respondent had given the Union more notice prior to the decision to recoup there would have been sufficient time for Dagle and Reiss to sit down and negotiate the terms of the recoupment. (T. 127)

[5] Reiss' testimony did not explicitly dispute this. Reiss stated that he checked with payroll and that it was too late because the payroll was complete and there was no way to reverse it at that time. (T. 191, 193, 196)

On September 11, 2016, Dagle also sent a letter to Reiss requesting information in order to properly investigate, a possible grievance over the recoupment plan. The letter included a request for the following information:

> 1. Provide copies of any communications, written or electronic between any Stericycle representatives or agents concerning or related to Stericycle's decision to deduct the amounts (copy enclosed) evenly over the next three (3) paydays for each employee starting with the September 12, 2014 payday.
>
> . . .
>
> 5. Provide copies of any communications, written or electronic between any Stericycle representatives or agents regarding Stericycle's implementation of Article 22 subsection 22.3 of the Collective Bargaining Agreement.

The letter requested that the information be provided by September 23, 2014. (GCX-5; T. 43)

Dagle testified that the reason the Union requested the information in items 1 and 5 was because the Union was told about the decision to recoup on September 1, 2014 without much opportunity to bargain about the decision and the Union wanted to know how long Respondent was planning the recoupment and who was involved in the decision. (T. 43-44.) Dagle further testified that with regard to item 5 Respondent obviously had internal discussions, so the Union wanted to find out why it took from April 13, 2014 to September 12, 2014 for Respondent to finally implement the health insurance deductions. (T. 44)

That same day, Reiss emailed Dagle the following:

> During our meeting yesterday, I explained that it was too late to reverse the upcoming deduction but offered to sit down and meet with you prior to taking any action on the others (without conceding our right to do so). Are you interested in meeting on these or not? I still, have the same dates available. If I don't hear from you, we will simply proceed as planned. I don't think I need to remind you that payroll is processed a week in advance of the pay date. (GCX-6, p. 2; RX-1, p. 15)

A few hours later, Dagle responded by email:

> You are misstating the facts of our discussion yesterday. I told you that the union was prepared to bargain over Stericycle's recoupment proposal provided that the

company restored the status quo and agreed to suspend any deductions while we discussed it You asked me to give you five minutes to call corporate and you would give me their answer. You came outside and told me that corporate was not going to restore the status quo and was going ahead with their plan to deduct the recoupment amounts over the next three weeks When I protested you said that you thought you could convince corporate to halt the last two deductions so that we could meet. I asked you to restate Stericyle's position. You said that Stericyle's position was that it would not restore the status quo and would proceed with the deductions as planned. (GCX-6; RX-1, p. 14)

Reiss responded by email on September 12, 2014:

I disagree with your characterization of our discussion about the deductions yesterday. I told you that it was too late to reverse course on the deduction scheduled for Friday, but that we would hold off and sit down to discuss the remaining deductions. At that point you insisted that the Company restore the status quo and you stated you would not bargain about the deductions unless and until we did that. Your demands regarding the status quo" ignore the simple fact that the employees owe the Company the money and are contractually obligated to pay it. Typically, "restoring the status quo" involves a situation in which the Company has taken away a benefit from employees and therefore must restore it.

Nevertheless, in my email, I was offering you the option to back down from your all or nothing position so that we can meet and agree on the other deductions—again, notwithstanding our position that we believe we have the right to make them. If you are not going to bargain the other deductions, we will proceed as e planned, if you want to meet to discuss these, let me know. I have availability most of next week. (GCX-6)

Respondent proceeded with the three catch up deductions over the next three pay periods—on September 12, 2014, September 26, 2014 and October 10, 2014. (T. 45, 48)

By email dated September 22, 2014, Carol Fox, Labor Relations Manager, provided some information not relevant to the matters in dispute. With regards to items 1 and 5, Respondent provided the following response:

1) The Company feels to see the relevance its own internal communications have on whether the Company violated the contract as alleged by the Union, i.e., whether the catch-up deductions violate the wage provisions or the above-cited provision of the contract. For this reason and because many of those same communications are privileged and/or confidential, the Company will not be furnishing the information. If there is any specific communication which you believe is relevant, please identify it so the Company can make a further assessment of its duty to furnish it.

5) This request is unclear. In terms of any internal communications that were not provided to employees or the Union, these communications are confidential, privileged and irrelevant. (GCX-7, T.)

Fox testified that she has never provided the information requested in items 1 and 5 of the Union's September 11, 2014 request for information. (T. 298)

On September 26, 2014, Dagle made another request for information concerning Respondent's recoupment plan, which included the following request for information:

> 3. Provide copies of Stericycle's bargaining notes, including notes of side bar discussions or other contacts with Union representatives concerning, or relating to discussion of employee health coverage deductions. (GCX-8)

Dagle testified that the Union sought item 3 to continue its investigation of the matter. The Union wanted to see if there was anything in Respondent's bargaining notes that discussed any problems of Respondent implementing Art. 22.3 of the contract. (T. 47)

On October 17, 2014, Fox emailed a response to the September 26, 2014 request. With regard to item 3, she wrote:

> The Company objects to this request on the grounds that its internal bargaining notes are confidential and irrelevant to the fact of whether or not there has been a violation of the CBA as claimed by the Union. As far as the other information pertaining to contacts with Union representative, this request is overly broad, as the Company has had many such contacts and conversations. Please provide a specific timeframe and if you can reference to a specific communication.

By email on October 20, 2014, Dagle responded to Fox's October 17, 2014 letter with the following:

> The documentation requested concerning, or relating, to Stericycle's institution of health care deductions is relevant on several grounds. As you know, the company delayed deducting employee contributions to health care premiums for nearly four months. The documentation requested should shed light on the reasons for the delay, the difficulties involved in instigating the deductions, the company's diligence in working for a solution and why the solution took as long as it did. It should also provide information on who was involved and the roles they played in working out a resolution Such information is essential to a fair

> evaluation of the employer's unilateral decision to recoup missed contributions through three unauthorized employee payroll deductions.
>
> The union is prepared to review and bargain over a specific Stericycle proposal to address its claimed confidentiality concerns.
>
> Finally, with respect to the request for notes (other than the bargaining notes to which the union is entitled), the union requests notes (and/or other documents) related to conversations between Stericycle representatives and the union over the employer's failure to deduct employee health contributions from the date of ratification to the date of this letter.

Although the parties did work out a confidentiality agreement on November 17, 2014, it pertained only to item 2 requested in the Union's September 26, 2014 letter, having to do with non-public information of Respondent's payroll vender. (RX-9, pp. 1, 4; T. 268) The information subject to the confidentiality agreement did not cover the bargaining notes requested in item 3 of the September 26 letter or internal communications between Respondent personnel with regard to implementation of the recoupment of the health care deductions.[6] (T. 270)

C. The 401(K) Requests For Information

Article 23.3 of the Southampton collective bargaining agreement also imposed a new duty on Respondent to contribute "$0.3125 per hour paid on a pre-tax basis for all straight-time hours paid per pay period" to Respondent's 401(k) Plan or stock purchase plan. Essentially, for a biweekly pay period consisting of 80 straight-time hours, Respondent agreed to contribute $25 per pay period. (GCX-2, p. 13; T. 49, 50, 112) During negotiations, this was a paramount issue for the Union. (T. 49-50) The Union believed that the contract required this new benefit to be paid directly into employees' 401(k) or stock purchase plans on a pre-tax basis. Respondent believed that the contract allowed it to pay the new benefit directly to employees who would then choose whether it went into the employee's 401(k) or stock purchase plan. Only if employees

[6] Respondent, in offering RX-9, acknowledged that it was not contending that the information contained in that exhibit was responsive to any allegation in the Amended Second Consolidated Complaint. (T. 259-260, 265)

elected the payment to be directed into their 401(k) plan would Respondent pay the amount on a pretax basis. If employees elected to have the payment go towards the stock purchase plan, the payment would be taxable. (RX-7, p. 42; T. 49, 275-276)

Sometime in May 2014, Respondent began paying the Southampton unit employees the $0.3125 per straight-time hour as part of employees' wages. It showed up on some employees' paystubs or earnings statements[7] as "other" and in others as "Un Sh Ex Pay." (GCX-13; T. 50, 54, 57) It did not go straight into employees 401(k) pre-tax as the Union believed it should have. Some employees were not receiving it at all. (T. 50, 53)

On June 2, 2014, the Union filed a grievance alleging Respondent violated Article 23, subsection 23.3.[8] (GCX-11; T. 51) On September 4, 2014, the Union filed for arbitration over the grievance. (RX-5) Dagle testified that although the Union was still evaluating its grievance, the Union had to file for arbitration at that time based on the time limitations in the collective bargaining agreement otherwise the grievance would have been moot. (T. 154, 175-176)

On September 5, 2014, Dagle sent a letter to Reiss requesting information in order for the Union to continue its investigation into and evaluation of the Article 23.3 grievance. The letter included requests for the following information:

1. Copies of all bargaining unit employees' bi-weekly earnings statements to include all earnings, deductions and year to date totals for each for the period April 13, 2014 through September 6, 2014.

2. On an ongoing basis, beginning with the period starting September 7, 2014 provide copies of all bargaining unit employees' bi-weekly earnings statements to include all earnings, deductions and year to date totals for each subsequent biweekly pay period.

[7] These terms were used interchangeably at the hearing.
[8] On September 4, 2014, the Union filed for arbitration. Dagle testified that at the time the Union filed for arbitration it was still evaluating the grievance. This was the last possible date that the Union could file for arbitration under the parties' grievance arbitration procedure. If the Union had not filed by that date, the grievance would not have survived. (RX-5; T. 154-155, 175-176)

6. Provide copies of any communications, written or electronic between any Stericycle representatives or agents concerning or relating to Stericycle's implementation of Article 23, subsection 23.3 of the Collective Bargaining Agreement.

7. Provide a written description of any meetings between Stericycle representatives or its agents at which Stericycle's obligation per 23.3 of the Collective Bargaining Agreement were discussed, identifying the date(s) of such meeting(s) and name(s) of the participants.[9]

8. Provide copies of the meeting notes of Stericycle representatives or its agents taken during the meetings identified in number 7 above. (GCX-12)

Dagle testified that the Union requested items 1 and 2 because the only way the Union could determine whether each individual employee was and is properly receiving the $0.3125 per straight-time hour is to look at employees' earning statements. Looking at employees' earnings statements, the Union could easily determine whether an employee was receiving the benefit, whether it was going into the 401(k), whether the benefit was taxed and whether it was paid for all the straight time hours earned by an employee. In this last regard, an employee could have more than 80 hours of straight-time during a pay period if they were paid for vacation time or other personal leave. Earnings statements also indicate whether an amount is considered pre-tax or not. (GCX-13, p. 1; T. 52-53, 318-319) The Union has requested earnings statements in the past, which Respondent has provided. (CPX-3; T. 309) Dagle also testified that the Union sought the information requested in items 6 and 8 because his recollection was that when they were negotiating for the Southampton contract, Respondent never communicated to the Union that there would be any problem in implementing Article 23.3. So the Union was looking to see if it had missed something and what the problems were in Respondent implementing Article 23.3.

[9] The Amended Second Consolidated Complaint does not allege that Respondent failed or refused to provide item 7. (GCX-1(dd))

On September 18, 2016, Dagle made an additional information request concerning the Article 23.3 grievance. Dagle requested the following information:

1. Copies of all documents, including bargaining notes, regarding discussions over the Southampton 401(k) provision during negotiations leading to the November 1, 2013 through October 31, 2016 collective bargaining agreement, showing, the dates of each negotiation session, the location of each session, the names of those present, the start and end times of sessions and breaks, sidebar discussions or other communications between sessions, and communications concerning bargaining before or after sessions whether in person, writing or telephone.

2. Copies of any written and/or oral collective bargaining proposals exchanged between Stericycle and the union regarding negotiations leading to the Southampton 401(k) provision, together with documents identifying the date of each such proposal and the identity of the party who made each such proposal and all documents showing responses to the proposals.

3. Copies of all documents showing agreements, tentative agreements, letters of understanding, and all memoranda of agreement between Stericycle and the Union regarding the 401(k) provision for the Southampton unit during the period of negotiations leading to the November 1, 2013 through October 31 2016 collective bargaining agreement.

Dagle testified that the Union sought this information because his recollection was that Respondent never voiced any problems with putting the $0.3125 into the unit employees' 401 (k) accounts on a pretax basis, so the Union wanted to see if there had been any discussions regarding that issue during negotiations. (T. 58-59)

On September 22, 2014, Fox emailed a response to Dagle. While objecting to the Union's September 5 and 18, 2014 information requests as seeking Respondent's legal theories and defenses for arbitration, Fox provided some of the information requested in the September 5, 2014 request and none of the information in the September 18, 2014 request. (GCX 15(a)(b); T. 59)

With regard to item 1 of the September 5, 2014 request, Fox attached a pdf of an excel spreadsheet which purported to contain the same information that would be shown on employees' earnings statements. The pdf runs for over a 100 pages with most pages having no

heading or other identifying information. (GCX-16; T. 277) Dagle testified that the document was not responsive to his request because he could not determine what information was in it. (T. 60) Fox testified that Respondent had provided the pdf report instead of the paystubs because it takes less time to generate the report than it does to print out paystubs. Fox further testified that it takes Respondent about four minutes to print out one paystub and that Southampton has about 100 employees. (T. 278) Fox admitted on cross-examination that she had specifically put the information into a pdf although in the past she had previously sent excel spreadsheets to the Union.[10] She further acknowledged that the information in the report was not understandable as it was sent; nor did it show clearly the information that was on earnings statements. (T. 299-301, 314-315, 316, 322)

With regard to item 2 of the September 5, 2014 information request, Fox refused to provide that information arguing that Respondent did not see the relevance of a continuing request and that, in any event, it was burdensome on Respondent to provide the information on a continuing basis. With regard to items 6 and 8 of that information request, Fox refused to provide the requested information arguing that the purpose of the request was solely aimed at discovering Respondent's legal theory and strategy in the arbitration. With regard to the September 18, 2014 request, Fox refused to provide any of the information request on the basis that the Union was seeking Respondent's legal theories and defenses for arbitration, that the Union was seeking pre-arbitral discovery and that Respondent's bargaining notes were confidential. (GCX-15(b))

On September 10 and 11, 2015, the parties arbitrated the grievance over this matter.[11] (T. 51, 276) In advance of the arbitration, on August 10, 2015, the Union subpoenaed Respondent

[10] In fact, later on pursuant to an arbitration subpoena, Respondent sent similar information in an excel spreadsheet to the Union. (RX-8, pp. 6-21)
[11] The arbitration is still pending. (T. 272)

for certain information, including earnings statement and bargaining notes. (CPX-1) Pursuant to that subpoena, Respondent made attempts to provide access to the Union to its payroll system in order to allow the Union the ability to see employee earnings statements. (RX-8) Finally, on November 17, 2015, Liz Sterling, Union Secretary and Office Manager, was finally able to see the screen with employee earnings statements. (T. 207-208) Ultimately, though she was never successful in printing out the earnings statements. (T. 163)[12]

Respondent has not provided items 6 and 8 of the Union's September 5, 2014 information request. Respondent has admittedly still not provided its bargaining notes that the Union requested in its September 18, 2014 letter. (T. 61-62, 311)

D. The Ebola Information Request and Handbook Request

In November 2014, Respondent's Morgantown Safety Manager, Ronald Maggiaro gave a ten to fifteen minute power point presentation to bargaining unit employees on Ebola waste. Part of that presentation was to educate employees on how to recognize Ebola waste packaging so that they would not handle it or accept it any fashion. (T. 228-229, 230)

Sometime in November 2014, the Union learned that bargaining unit employees were shown a video concerning how to handle Ebola waste at a safety meeting. By emails to Maggiaro dated November 13 and 18, 2014, Dagle requested that Respondent provide the Union with a copy of the "Ebola video." (GC-17; T. 62, 228)

By email dated November 18, 2014, Fox responded with the following:

> John: Please copy me on any future requests as I am normally the one gathering information to respond. First, Ebola is Category A waste, not regulated medical waste (RMW), so it fails outside the span of the Collective Bargaining Agreement. Although the Morgantown employees will not be transporting or

[12] Human Resource Information Systems Manager David Beaudoin's, testimony is not to the contrary. He recalled resolving Sterling's issue of not being able to see the earnings statements but could not recall if she said she could print out the earnings statements. (T. 206, 208)

> handling this waste, we decided to educate our employees on the Company's activities related to Ebola. The presentation shown to the employees is confidential and proprietary. This type of information could cause a great deal of speculation and public concern if it was released to third-parties outside our organization. Consequently, we are more than happy to review the power-point presentation with you that we shared with the employees in person, at a mutually convenient time at our offices, but we are not providing a copy to you or anyone else for reasons I stated. (GCX-18, p. 3)

Dagle responded by email dated November 19, 2014 in which he challenged Fox's claim that the power-point presentation was confidential. He noted that the employees were shown it with no requirement that they treat it as confidential or proprietary.[13] Nevertheless to meet Fox's claim of confidentiality, he pledged that the Union would not show the power point to anyone outside of its officers, representatives, and agents. He then again requested a copy. (GCX-18, pp. 2-3)

By email to Dagle dated November 25, 2014, Fox claimed that "under common law" Respondent was required to keep "non-public information confidential." She said that employees also agree to the requirement when they sign Respondent's handbook. She dismissed the Union's pledge concerning restricting who would see the power-point by stating that he could not personally guarantee that anyone he shared the materials with would keep the material confidential. She noted that no one who had been shown the materials was given a copy and that this was the same access she was offering to the Union. (GCX 18, pp. 1-2)

By email dated December 1, 2014, Dagle responded that he was unaware of any common law requirement that would prevent a unit employee from sharing the information that Respondent had presented concerning Ebola. With respect to that claim, if there was "some prohibition on sharing 'non public' Stericycle information with third parties in the handbook that applies to the Ebola presentation, I would like to see it. Please provide me a copy of the current

[13] Dagle also testified at the hearing that if it was shown to employees than there could not be a confidentiality concern. (T. 64)

Employee Handbook employees must sign." Further he explained that the Union needed to verify the accuracy of the information that Respondent was providing to employees in order to ensure their safety. He stated that Respondent's offer was inadequate because the Union needed to submit a copy to professional experts in infectious disease and the biosafety fields.[14] He stated that it would not be cost effective to insist that the experts attend a session at Respondent's facility. Nevertheless, the Union agreed to bargain over an agreement to address the Respondent's claimed confidentiality concerns. (GCX-18)

The Union received no further response concerning its requests for a copy of the Ebola materials or its willingness to bargain over Respondent's claimed confidentiality concerns. (T. 66, 109, 324)

By letter dated March 2, 2015,[15] Fox forwarded to the Union a recently implemented handbook at the Morgantown facility. The handbook that was referenced in Fox's November 25, 2014 email has not been provided. (GCX-21; GCX-22; T. 65, 305-306)

E. The Vehicle Backing Program Information Request

In late November 2014, the Union received a counseling report concerning unit member James Clay. The report stated that Clay violated the company's vehicle backing program and that the corrective action was going to be to view and retrain on the company vehicle backing program. (T. 67, 224)

As part of his representation of Clay, Dagle sent a letter dated November 24, 2014 by fax and email to Respondent's Transportation Manager, Bob Schoennagle, requesting certain

[14] At the hearing , Dagle testified that the Teamsters International Union (International Union) has an extensive safety department and that whatever Respondent would have provided to him, he would have sent to the International Union for them to review to determine whether it was adequate training for Ebola and accurate. (T. 64-65, 148)

[15] The parties stipulated that the correct date for the letter was March 2, 2015 and not March 2, 2014. (T. 70)

information, including a copy of the vehicle backing program. (GCX-19; T. 66) Respondent provided all the information requested by the letter except for the vehicle backing program. (RX-10, pp. 2-4) At a meeting with Schoennagle on November 28, 2014, Dagle asked for a copy of Respondent's vehicle backing program. Schoennagle did not provide it (T. 67, 216) At a subsequent meeting with Schoennagle, Glenn Oesyterling, Transportation Supervisor and Susan O'Connor, Human Resource Manager, on January 22, 2015, Dagle again asked for a copy of Respondent's vehicle backing program. At the meeting, Schoennagle said that Respondent would not be providing the vehicle backing program because it was confidential and proprietary. Dagle asked what the vehicle backing program consisted of. Oesyterling responded that the program consisted of a power point presentation and a video.[16] (T. 67-68) The video is a commercial video owned and copyrighted by J.J. Keller & Associates, Inc.

By email dated January 29, 2015, Schoennagle repeated that the program was considered a proprietary company training tool. He did, however, offer to let Dagle or the shop steward sit in on a presentation of the program with a proper written request. Schoennagle testified that he had discussed this with his immediate manager, Steve Pantano, and Dawn Blume, Respondent Counsel, who told him that Respondent was not providing it because it was proprietary information as far as the Power Point presentation and there were copyright concerns for the video. (GCX-20; T. 68, 217)

By email dated March 2, 2015 to Dagle, Respondent disingenuously claimed that it did not realize until the filing of the charge in Case 04-CA-145466 that the Union was seeking a copy of both the power point and the video, although Dagle had asked several times for a copy of

[16] According to Schoennagle, he told Dagle on November 28, 2014, that the vehicle backing program consisted of a video from an outside vendor used to train drivers along with a 5 point presentation created by Respondent to review safe backing procedures. (T. 215)

the "vehicle backing program," which Respondent admittedly had previously explained to Dagle consisted of the power point presentation and video. In that same email, Respondent finally provided the presentation, which it still claimed was proprietary, but stated for the first time that it could not provide the Union with a copy of the video because of copyright concerns. It did, however, offer to show the Union the video and provided a link to J.J. Keller's website where the Union could purchase the video.[17] (GCX-21; T. 67-68, 215) The Union did not purchase the video because it was not sure that the link being provided was the same video that unit employees were shown. Dagle testified that the Union needs a copy of the program so that he could show it to the International Union safety department in order to analyze it, to determine whether it was adequate training. (T. 69, 72)

F. The Soubra Grievance Information Request

On November 20, 2014, Dagle filed a grievance on behalf of employee Ron Soubra alleging that supervisor Ron Lobb grabbed, pushed and pulled Soubra. (GCX-23; T. 72) By letter dated December 5, 2014, Mike Valtin, Respondent's Plant Manager, responded with the following:

> While the Company does not necessarily agree with the Union's statement that Ron Lobb's action toward Ryan Soubra was egregious or forceful, we believe that no Manager or Supervisor should touch an employee. The Company agrees that this behavior is unacceptable and will not be tolerated. Therefore, Mr. Lobb's unacceptable behavior has been addressed with him per company policy. Harassment Training will be held for all Morgantown Plant Supervisors and Team Members by January 1, 2015. (GCX-24)

[17] The video cost over $300. Fox testified on cross-examination that she did not attempt to discuss with J.J. Keller whether Respondent could give the Union the right to have access to the video for some amount of time pursuant to the parties' collective bargaining obligation. (T. 304-305)

By email dated December 11, 2014, Dagle informed Valtin that the Union was proceeding to the second step of the grievance procedure and requested the following information:

2. The names and statements of any witnesses of which the Company is aware that have knowledge of the facts and circumstances regarding supervisor Ron Lobb's egregious and unacceptable action on Ryan Soubra on November 15, 2014.

3. Copies of all investigative reports concerning supervisor Ron Lobb's egregious and unacceptable action on Ryan Soubra on November 15, 2014 which are in the possession of the company including the company's investigative notes of interviews of witnesses or persons interviewed regarding this incident.

4. Copies of all documents, reports, emails, etc., relevant to the Company's investigation of supervisor Ron Lobb's egregious and unacceptable action on Ryan Soubra on November 15, 2014.

5. Copies of all documents, reports, emails, etc., related to Stericycle's discipline of supervisor Ron Lobb's egregious and unacceptable action on Ryan Soubra on November 15, 2014.

6. Copies of all documents, reports, email, etc., in supervisor Ron Lobb's personnel file regarding similar previous instances of egregious and unacceptable actions on employees. (GCX-25)

Dagle testified that the Union sought the information requested above for the following reasons: Item 2 because the Union was made aware that there were other individuals present that witnessed the assault,[18] so it wanted statements of any other witnesses and the names of all the witnesses that Respondent was aware of so the Union could interview them as well; Item 3 because Respondent had told the Union at the grievance meetings that it did a thorough investigation, so the Union wanted copies of Respondent's investigative notes to determine what it was able to find out about what happened; Item 4 for the same reasons as item 3 and because if Lobb had email exchanges regarding his version, the Union wanted all the facts and all the

[18] On cross examination, Dagle explained that Soubra had given him the names of two witnesses but that they spoke Spanish. Another employee saw the incident as well. Valtin gave Dagle a written account of one employee's statement.

documents related to the assault and investigation; Item 5 because the Union wanted a copy of the discipline to keep a file related to Lobb's behavior towards bargaining unit employees and the copy would confirm that Respondent actually did discipline Lobb[19]; and Item 6 because Lobb showed a pattern of abuse of employees, so the Union wanted to investigate whether his personnel file contained previous instances of this nature. Dagle further testified that he wanted this information to see if it disclosed a pattern of Lobb doing this that Respondent was aware of. If so, Dagle was going to enter into discussions with Respondent to protect the employees so that it would not happen again. (T. 75-76, 153)

By email dated December 30, 2014, at 12:31 p.m., Dagle confirmed that Respondent refused to provide any of the above requested information and that Respondent had refused to allow the Union to attend the harassment training referred to in Valtin's earlier letter. (GCX-25) A few minutes later, at 12:36 p.m., Dagle emailed Valtin requesting Respondent's Code of Conduct and Harassment Training referenced in its December 5, 2014 step 1 grievance response. Dagle testified that the Union sought the Code of Conduct and Harassment Training. First, because it was concerned that Respondent's culture was okay with supervisors roughing up employees and it wanted Union counsel to see if the training was adequate to stem this type of behavior at the workplace. Second, if Respondent was showing it to employees, then it should show it to the Union. (T. 77-78)

Later that day, at 4:15 p.m., Valtin responded by email that the video was proprietary and while available for the Union to review, Respondent would not provide the Union with a copy.[20]

[19] On cross examination, Dagle explained that seeing the discipline was insufficient because he could not recall whether Lobb had received a written or verbal warning. (T. 151)

[20] At the hearing, Fox testified that the training consisted of a ten to fifteen minute video developed on behalf of Respondent by an outside law firm. The video consisted of a conversation between presumably a lawyer and another person clarifying what harassment is,

(GCX-26) Dagle testified that just seeing the video was not sufficient because he wanted the Union's attorney and potentially the International Union's safety committee to see the video and Respondent was not offering to show it to anyone other than him. (T. 78, 150-151) At 4:21 p.m. Valtin sent another email to Dagle contending that with respect to items 2 through 6 above, the request related to a non-unit individual, that the requested information was not presumptively relevant and that the Union had failed to "justify its relevance as to any grievance or discipline issued to a unit employee." (GCX 27, p. 2)

By email dated January 7, 2015, Dagle responded with the following:

> The union believes that the relevance of the requested information to its investigation and evaluation of the Soubra grievance is self-evident. As you are well aware, the grievance concerns Mr. Lobb's physical assault on a bargaining unit member. You have represented to me that Stericycle has disciplined Mr. Lobb for his conduct. In order to evaluate whether the discipline is sufficient to deter further misconduct against bargaining unit members, I have requested information related to Stericycle's investigation into the assault, Mr. Lobb's disciplinary record for similar incidents and Stericycle's evaluation and consideration of the appropriate discipline under the circumstances. (GCX-27, p. 2)

By email dated January 12, 2015, Valtin responded that Respondent had already provided the Union with access to the discipline issued to Lobb "to demonstrate its good faith and commitment to its policies and to assure the Union that Mr. Lobb will continue to suffer consequences for violating Company policies, which include inappropriate interactions with coworkers." The mail further stated that the Union had no right to challenge whether the discipline issued to Lobb was sufficient because it was not related to the Union's representational duties. Valtin concluded by stating that the request for information was denied. (GCX-27)

G. The TMX Information Request

---

what it entails, what employees are supposed to do if they feel they are being harassed, and how they can report it. (T. 252-253, 297)

On July 9, 2015, Dagle was at the Morgantown facility when he saw that Respondent had posted a notice soliciting volunteers to participate in what they called the new workplace group "to discuss and implement the ideas we receive from the employee surveys, feedback from the meetings with the TMX team.[21]" (T. 80) The Union had not been notified. On July 15, Dagle sent a letter to District Manager Steve Pantano saying that he noticed the signup sheet and he requested the information detailed below:

> 4 Copies of all documents concerning or relating to the TMX team meetings with Morgantown employees. (GCX-28)

Dagle testified that as there were apparently meetings where terms and conditions of employment were discussed, the Union wanted any documents concerning what this TMX team was all about, the criteria, and what was going to be discussed. (T. 81)

By email on August 7, 2015, Fox responded to the Union's information request with a letter and attachments. (GCX-29(a-d); T. 81, 250-251) Fox stated:

> As you know, the sign-up sheet you saw in Morgantown was posted in error, and we have posted a notice communicating that fact to all employees. I believe you were already given a copy of the notice, but I've attached another copy for your convenience. Since there is no employee workgroup being formed in Morgantown, we feel most of the information you are requesting is irrelevant.

Nonetheless, Respondent did provide some information. With regard to item 4 specifically, Fox attached a power point presentation that was shared with the employees regarding the results of a survey for informational purposes only. Fox went on to note that Respondent "has omitted slides that contain Company confidential information that show comparative data with our non-represented locations." (GCX-29(b)) At the hearing, Fox testified that anything that showed corporate-wide or region wide information was redacted out throughout the presentation provided to the Union. With regard, specifically to the slides that were shown to employees, one

[21] "TMX" stands for "Team Member Experience." (T. 81)

or two were removed from the slides provided to the Union for this reason because it was considered confidential despite being shown to employees. (T. 252, 296, 331)

H. The New Handbook at Morgantown

In late February 2015, Respondent handed out a new handbook at the Morgantown facility to unit employees during the team member experience meetings where Respondent went through the survey results. Susan O'Connor provided a list to the Union of all the employees that received the handbook during those meetings. (GCX-32; T. 89, 109, 325) In addition, as new employees have been hired they too have been given a copy of the new handbook and signed its acknowledgement. As noted above, on March 2, 2015, Respondent provided a copy of the new handbook that was implemented at the Morgantown facility to the Union. (GCX-21; GCX-22; T. 71, 305-306, 328) the handbook has not been distributed in Southampton. (T. 109)

On the first page of the handbook, it states: "This handbook is for our U.S. based team members. Some benefits may not apply to union team members and in some cases these policies may be impacted by collective bargaining agreements." That same page also contains the following language: "No person is authorized to make any representations contrary to, in addition to, or to modify in any way this Team Member Handbook without the written approval of the Corporate Human Resources Department." (Emphasis in original) (GCX-22, p. 1) The final page, which employees are expected to sign acknowledging that they have received the handbook, states:

> I acknowledge receipt of my copy of the Stericycle, Inc. Team Member Handbook and understand that it is my responsibility to know and abide by its contents.
>
> This copy of the Stericycle, Inc. Team Member Handbook supersedes any and all previously published editions. Stericycle reserves the rights to modify, revoke, suspend, terminate or change at any time the terms of this Team Member Handbook. (GCX-22; T. 327)

It is undisputed that the handbook contains different terms and conditions than the Morgantown collective bargaining agreement. (GCX-22; (T. 326) Dagle testified at length regarding how the handbook differed from the Morgantown collective bargaining agreement with regard to overtime, attendance policy, work schedules, paid time-off, paid holidays, personal time-off, work rules, disciplinary policy, use of bulletin boards, recoupment, drug testing, grievance procedure, employee probationary period, employee status and vehicle collision reporting. (T. 91-105) Although it does not appear that Respondent is applying the terms of the handbook at Morgantown, some employees have expressed a belief to Dagle that certain practices in the handbook, which were modified or eliminated by the collective bargaining agreement, continue to apply at Morgantown. (T. 111, 139)

I. The Unlawful Overbroad Policies

The nationwide handbook given to Morgantown employees contains the following policies, in pertinent part:

> **Retaliation**—"All parties involved in the investigation [of a harassment complaint] will keep complaints and the terms of their resolution confidential to the fullest extent practicable." (GCX-22, p. 10)
>
> **Electronic Communication Policy**—"A substantial portion of our business is transacted by telephone and over the wide area network. Therefore in order to maintain the efficiency of these systems non-business usage must be restricted. Phone and data lines must be kept open for business purposes. Accordingly, personal telephone calls and e-mails should be infrequent and brief, and limited to urgent family matters." (GCX-22, p. 26)
>
> **Use of Personal Electronics**— "The use of personal cell phones or other personal electronic devices such as MP3 players is prohibited in waste processing, warehouse, loading and unloading areas during operating hours and any areas subject to vehicle movement at any time….Personal mobile phones and all other personal mobile electronic devices are to be kept in team member's lockers. Personal phone calls and use of personal electronic devices shall be restricted to meal and break periods. Violation of this policy may result in disciplinary action up to and including termination." (GCX-22, p. 28)
>
> **Personal Conduct**—"In order to protect everyone's rights and safety, it is the

Company's policy to implement certain rules and regulations regarding your behavior as a team member. Conduct that maliciously harms or intends to harm the business reputation of Stericycle will not be tolerated. You are expected to conduct yourself and behave in a manner conducive to efficient operations. Failure to conduct yourself in an appropriate manner can lead to corrective action up to and including termination."

The following are some examples of infractions which could be grounds for corrective action up to and including termination, however this list is not all-inclusive.

….

- Engaging in behavior that is damaging to Stericycle's reputation." (GCX-22, p. 30)

Conflict of Interest—"Stericycle will not retain a team member who directly or indirectly engages in the following:

An activity that…adversely reflects upon the integrity of the Company or its management." (GCX-22, p. 33)

On May 21, 2015, Reiss handed Dagle two policies that he wished to negotiate with the Union about for the Southampton facility—a Camera and Video Use Policy and a Use of Personal Electronics in the Workplace Policy. Reiss told Dagle that these were nationwide policies that were also in effect art Morgantown. This was the first that Dagle was aware that these policies were in effect at Morgantown. (GCX-30; GCX-31; T. 87-88)

The Camera and Video Use Policy provides, in pertinent part:

3.1 Team members are prohibited from taking pictures with a personal or company-issued cell phone camera of any Stericycle property, operation, or equipment without the permission of their supervisor/manager.

4.1 Team members are prohibited from taking video or audio recordings with a personal or company camera, camcorder, or other device of any Stericycle property, operation or equipment without the permission of their supervisor/manager."

The Use of Personal Electronics in the Workplace Policy provides, in pertinent part:

Section 5.1 Team members, visitors and vendors are prohibited from using personal mobile phones or other personal electronic devices such as MP3 players, (i.e. iPods) in waste processing, warehouse, loading and unloading areas during operating hours, and any area subject to vehicle movement at any time.

> Section 5.3 Personal phone calls and use of personal electronic devices shall be restricted to meal and break periods.
>
> Section 5.5 Violation of this policy may result in disciplinary action up to and including termination.

Dagle testified that pursuant to these policies Morgantown employees are prohibited from having their cell phones in the plant, even during non-working time. Instead, they keep them in their lockers. So even on breaks or lunch, if there was a safety hazard in the plant and employees wanted to take a picture of it and forward it to him, employees are prohibited from bringing their cell phone into work areas. (T. 143, 144, 171, 241) While Dagle acknowledged that it was not good working practice to use cell phones while working, he testified that it was a good safety practice to allow employees on on-working time to take pictures of safety hazards. Dagle gave an example of an incident two years before where the shop steward was hesitant to take picture of safety hazard for fear of being fired. Dagle ended up going to the facility and made Respondent shut down the machine, which had a rusted control box that posed an electrocution risk to employees. Dagle also filed an OSHA complaint. OSHA eventually fined Respondent over this safety violation.[22] (T. 144-145)

IV. ARGUMENT

A. Respondent Violated Section 8(a)(5) of the Act by Unilaterally Imposing a Recoupment of Health Insurance Deductions Without First Notifying and Bargaining With the Union.

It is well settled that an employer violates Section 8(a)(5) of the Act when it makes substantial and material unilateral changes during the course of a collective-bargaining relationship on matters that are mandatory subjects of bargaining. See *NLRB v. Katz,* 369 U.S.

[22] Although this occurred prior to the Union's knowledge of the two policies, both policies were in effect at that time—the Camera and Video Use policy has been in effect since 2012 and the Use of Personal Electronics in the Workplace Policy has been in effect since April 2014. (GCX-30; GCX-31; T. 145-146)

736, 743 (1962). Mandatory subjects of bargaining include those delineated in Section 9(a) as "rates of pay, wages, hours of employment, or other conditions of employment" and in Section 8(d) as "wages, hours, and other terms or conditions of employment." *Ford Motor Co. v. NLRB*, 441 U.S. 488, 496 (1979). Changes to payments of wages are mandatory subjects of bargaining. *JPH Management, Inc*., 337 NLRB 72, 73 (2001).

Good-faith bargaining requires timely notice and a meaningful opportunity to bargain regarding the employer's proposed changes, as no genuine bargaining can be conducted where the decision has already been made and implemented. *Ciba-Geigy Pharmaceuticals Division*, 264 NLRB 1013 (1982), enfd. 722 F.2d 1120 (3d Cir. 1983); *Pontiac Osteopath Hospital*, 336 NLRB 1021, 1023-1024 (2001); C*astle Hill Health Care Center*, 355 NLRB 1156, 1189 (2010); *S & I Transportation, Inc.*, 311 NLRB 1388 (1993). An employer's unilateral change that affects numerous bargaining unit employees certainly constitutes a Section 8(a)(5) violation. *USC University Hospital*, 358 NLRB 1205, 1213 (2011), citing, *Carpenters Local 1031*, 321 NLRB 30, 32 (1996).

There is no dispute that the contract required Respondent to deduct one percent of Southampton unit employees' pay for the cost of health insurance starting after the contract was ratified by employees. Nor is there any dispute that Respondent did not start deducting the one percent until more than four months after the parties had entered into the new contract. During that time unit employees were not paying for their portion of the health insurance cost. While Respondent may have been entitled to "recoup" the one percent health insurance cost from Southampton unit employees for that period, Respondent was not free to unilaterally implement that recoupment without bargaining with the Union as to how and when that recoupment would be implemented. See e.g. *JPH Management, Inc*., 337 NLRB at 73; *Atlantis Health Care Group*,

356 NLRB 140, 143 (2010).

In its September 5, 2014 email letter to the Union, Reiss simply announced its decision to recoup the health insurance cost through equal deductions from the employees' next three paychecks. The effect of this action was to reduce the wages of unit employees for those three pay periods, clearly a substantial and material change. By announcing its decision with a fixed mind and without sufficient advance notice to facilitate meaningful negotiations, Respondent presented the Union with nothing more than a fait accompli. *Intersystems Design Corp*., 278 NLRB 759 (1986), *Ciba-Geigy Pharmaceuticals Division*, supra 264 NLRB at 1017. See also *Laro Maintenance Corp*., 333 NLRB 958, 959 (2001) (employer made unlawful unilateral change where it announced as fait accompli its intention to modify employee hiring procedure day before implementation); *S & I Transportation, Inc.*, supra, 311 NLRB at 1388 n. 1, 1390 (employer announced change from weekly to biweekly pay periods two business days prior to implementation; announcement of fixed position constituted bad faith fait accompli). Moreover, Respondent's actions significantly and materially impacted every Southampton unit employee.

Respondent contends that it did not have an obligation to bargain about the recoupment because the contract required it to deduct the monies from unit employees. That argument must fail. The contract only required Respondent to start deducting health costs following ratification. It did not specify how and when Respondent could recoup health insurance costs if Respondent failed to start deducting the costs in a timely manner. In *Eagle Transport Corp*., 338 NLRB 489, 490 (2002), the Board held that the employer did not unlawfully reduce employees' wages without bargaining where a computer programming error caused a miscalculation of wages in a single paycheck. The Board held that the employer was not required to bargain in order to correct an administrative error that was promptly corrected upon discovery. Here, Respondent's

problems with establishing the healthcare deduction dragged on for over four months. During that time, Respondent did not give the Union any indication that it would not negotiate over recoupment as it had in the past. This was not a correction of one pay period. This was a significantly more onerous situation for employees than that in *Eagle Transport*. Similarly, *Alexander Linn Hospital Association*, 288 NLRB 103 (1988), where the Board found that an employer did not unlawfully recoup dues deductions paid to the union, is inapposite. There, unlike in the present case, the employer's action only affected "a handful of employees …, the amounts of money were insubstantial, the payroll corrections had no lasting, continuing, or substantial impact on wages, and there was a reasonable business necessity for immediate action." Id., at 118. Again, this was not the situation here, as Southampton employees were making up an over four months' difference in health care deductions.

Respondent further argues that even if it did have an obligation to bargain, it remedied that failure by offering to bargain about the second and third recoupment pay periods. Respondent's offer was, however, as characterized by Dagle, "too little too late." (T. 127) Respondent's obligation to bargain is one that must take place before it implements the change, "as no genuine bargaining can be conducted where the decision has already been made and implemented." *Dorsey Trailers, Inc*., 327 NLRB 835, 858 (1999) (citations omitted), enfd. in part and denied in part 233 F.3d 831 (4th Cir. 2000). Despite repeated requests by the Union, Respondent flat out refused to hold off on the original recoupment until the parties could bargain about how it was to be implemented. Once Respondent unilaterally implemented the changes without bargaining, it violated the Act. The violation must first be remedied before the Union should be required to bargain. See *S & I Transportation, Inc.,* 311 NLRB at 1390.

Accordingly, Respondent's arguments must fail and the Respondent should be found to

have violated Section 8(a)(5) by unilaterally implementing a recoupment plan for the healthcare costs at the Southampton facility.

B. Respondent Violated Section 8(a)(1) and (5) of the Act by Implementing a New Handbook in the Morgantown Facility Without Notifying and Bargaining with the Union

As noted above, it is well established that an employer violates Section 8(a)(5) and (1) of the Act by changing wages, hours or other terms and conditions of employment of bargaining unit employees without giving the employees' bargaining representative notice and a meaningful opportunity to bargain about the changes. *NLRB v. Katz*, supra; *United Cerebral Palsy of New York City*, 347 NLRB 603, 607 (2006).

The Board has specifically found the following subjects contained in employers' work rules to be mandatory subjects of bargaining: work rules involving the imposition of discipline: *United Cerebral Palsy of New York City*, 347 NLRB at 607; and *Toledo Blade Co*., 343 NLRB 385 (2004); changes in the assignment of overtime, *Dearborn Country Club*, 298 NLRB 915 (1990); absenteeism and tardiness policies, *Dynatron/Bondo Corp*., 324 NLRB 572 (1997); drug testing policies, *Allied Aviation Fueling of Dallas*, 347 NLRB 248 fn. 2 (2006).

There is no dispute that the handbook distributed by Respondent at the Morgantown facility contained many changes to the terms and conditions of employment than that in the collective bargaining agreement of Morgantown employees. Nor is there any dispute that overtime, attendance policy, work schedules, paid time-off, paid holidays, personal time-off, work rules, disciplinary policy, use of bulletin boards, recoupment, drug testing, grievance procedure, employee probationary period, employee status and vehicle collision reporting are mandatory subjects of bargaining.

In addition, the handbook retained language giving Respondent the right in its sole discretion to change handbook policies going forward. The language is so broad as to encompass terms and conditions of employment set forth in the handbook, which are mandatory subjects of bargaining. Such reservation of rights clauses disparage the collective-bargaining process, undermine the Union, and are unlawful. *United Cerebral Palsy of New York City*, 347 NLRB at 608. Respondent cannot unilaterally change their terms and conditions of employment through handbook revisions or reserve to itself the right to do so in the future. It is irrelevant that the handbook is used company-wide. Moreover, Respondent did not give meaningful notice and an opportunity to bargain to the Union before implementing the new handbook. The Union was only notified of the new handbook after it was handed to Morgantown employees. Under these circumstances, the Union was clearly presented with a fait accompli.

While Respondent argues that it did not actually change employees' terms and conditions, as it abided by the Morgantown collective bargaining agreement, the language in the handbook does not make it clear to employees that the handbook only applies where it does not conflict with the collective bargaining agreement. Respondent's handbook instead states that "[s]ome benefits may not apply to union team members and in some cases these policies may be impacted by collective bargaining agreements." While that may be clear to Respondent's Human Resources team as to what that means, it is not clear to employees, especially when the same page contains language that no one is authorized to make changes without the express written approval of Respondent's Human Resources department. Any ambiguity in the language of the handbook as to whether it conflicts with the collective bargaining agreement should be construed against

Respondent who promulgated and drafted it. See e.g. *Karl Knauz Motors, Inc.*, 358 NLRB 1754, 1755 (2012); *Norris I O'Bannon,* 307 NLRB 1236, 1245 (1992). In these circumstances, Respondent's February 2015 implementation of the handbook at the Morgantown facility should be found to violate Section 8(a)(5) of the Act.

C. Respondent Violated Section 8(a)(1) and (5) of the Act by Failing and Refusing to Provide Relevant Information to the Union

1. The Legal Standard

Under the Act, an employer is obligated, upon request, to furnish a union with information that is potentially relevant and useful to its role as the exclusive bargaining representative of unit employees. *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 303 (1979); *NLRB v Acme Industrial Co*., 385 U.S. 432, 435-436 (1967) Certain types of information pertaining to wages, hours, benefits, and working conditions of employees are considered, "so intrinsic to the core of the employer-employee relationship (as to be) considered presumptively relevant." *San Diego Guild v. NLRB*, 548 F. 2d 863, 867 (9th Cir. 1977); *Coca-Cola Bottling Co*., 311 NLRB 424 (1993). Where information is considered to be presumptively relevant, no specific showing of relevance is required, and the employer has the burden of proving lack of relevance. *Marshalltown Trowel Co*., 293 NLRB 693 (1989) (the Union is not required to articulate its purpose in requesting presumptively relevant information); see also, *Ohio Power Co*., 216 NLRB 987, 991 (1975); *Grand Rapids Press*, 331 NLRB 296 (2000); *Contract Carriers Corp.*, 339 NLRB 851, 858 (2003). A liberal discovery type standard is applied, and the Union is not required to prove that the requested data will be dispositive of the issue before the parties. *ATC/Vancom of Nevada Ltd.*, 326 NLRB 1432, 1434 (1998).

An employer can avoid production only if it either proves the information is not relevant or demonstrates some reason why it cannot be provided. *Ormet Aluminum Mill Products Corporation,* 335 NLRB 788, 801 (2001); *A-Plus Roofing,* 295 NLRB 967, 970 (1989), enfd. 39 F.3d 1410 (9th Cir. 1994).

It is well settled that in certain situations, confidentiality claims may justify a refusal to provide information. *Mission Foods,* 345 NLRB 788, 791-792 (2005) . When a union requests relevant but assertedly confidential information, the Board balances the union's need for the information against any "legitimate and substantial confidentiality interests established by the employer." *Detroit Edison v. NLRB*, supra 440 U.S. at 315, 318-320. The party asserting confidentiality has the burden of proving that it has a legitimate and substantial confidentiality interest in the information sought, and that such interest outweighs its bargaining partner's need for the information. *Mission Foods,* supra; *Washington Gas Light Co.,* 273 NLRB 116 (1984). Blanket claims of confidentiality will not be upheld. *Pennsylvania Power Co.,* 301 NLRB 1104, 1105 (1991); *Washington Gas Light Co.,* supra at 117. When a party is unable to establish confidentiality, no balancing of interests is required and it must disclose the information in full to the requesting party. *Detroit Newspaper Agency*, 317 NLRB 1071 (1995); *Lasher Service Corp.*, 332 NLRB 834, 834 (2000). See generally *Bud Antle*, 361 NLRB No. 87 (2014), incorporating by reference 359 NLRB 1257, 1265 (2013) (union grieving subcontracting of unit work entitled to requested information on contracts, production, and locations where work performed, etc., where employer failed to substantiate claim that information was trade secret and proprietary); *Bridge, Structural & Ornamental Ironworkers Local 207 (Steel Erecting Contractors),* 319 NLRB 87, 91 (1995) (union that failed to establish that requested information on apprentices' wages and dues was proprietary was ordered to disclose information). Finally, even if such

conditions are satisfied, the party may not simply refuse to provide the requested information, but must instead seek an accommodation that would allow the requesting party an opportunity to obtain the information it needs while protecting the party's interest in confidentiality. *Mission Foods,* supra 345 NLRB at 791-792; *Tritac Corp.,* 286 NLRB 522, 522 (1987).

An unreasonable delay in furnishing requested relevant information is as much a violation of the Act as refusal to provide the information at all. *Postal Service,* 332 NLRB 635, 640 (2000). The Board evaluates the reasonableness of a delay in supplying information, on the basis of "the complexity and extent of the information sought, its availability and the difficulty in retrieving the information." *Samaritan Medical Center,* 319 NLRB 392, 398 (1995). Applying this standard, the Board has found to be unlawfully unreasonable delays in providing information of six weeks, *Bundy Corp.*, 292 NLRB 671 (1989), seven weeks, *Woodland Clinic,* 331 NLRB 735, 737 (2000), six weeks, *Bituminous Roadways of Colorado,* 314 NLRB 1010 (1994), three weeks, *Aeolian Corp.*, 247 NLRB 1231, 1244 (1980), and two weeks, *Capitol Steel & Iron Co*., 317 NLRB 809 (1995).

2. The Recoupment Information Requests

The information that the Union requested concerning the recoupment issue was clearly relevant to its role as bargaining representative of the Southampton unit employees. Items 1 and 5 of its September 11, 2014 information request went to Respondent's decision to recoup the health insurance costs from those employees.[23] (GCX-5) Item 3 of its September 26, 2014 information request sought bargaining notes concerning or relating to the discussion of the health coverage deductions.[24] (GCX-7) The Union explained the relevance of the information it sought; that it "should shed light on the reasons for the delay, the difficulties involved in instigating the

[23] Paragraphs 9(b) and (m) of the Second Amended Consolidated Complaint. (GCX-1(dd))
[24] Paragraphs 9(c) and (n) of the Second Amended Consolidated Complaint. (GCX-1(dd))

deductions, the company's diligence in working for a solution and why the solution took as long as it did. It should also provide information on who was involved and the roles the played in working out a resolution. Such information is essential to a fair evaluation of the employer's unilateral decision to recoup missed contributions through three unauthorized employee payroll deductions." (GCX-10) These requests concern information to help the Union to assess and investigate whether it could file a grievance over Respondent's actions in implementing the recoupment in the manner it did. As such, the Union has demonstrated that the information is necessary and relevant. Respondent was obligated to turn over information that could help the Union decide whether to file a grievance in the matter. An actual grievance need not be pending at the time of the information request. *Ohio Power Co.*, supra, 216 NLRB at 991.

Respondent asserted two defenses in refusing to provide the information—that it was not relevant and that the information was privileged and confidential. As shown above, the Union has established the relevance of the information. Respondent argues that it has turned over all information that is "non-privileged and non-confidential." Respondent does not explain how the requested information is privileged and therefore has failed to demonstrate that the requested information is privileged under the attorney-client relationship. The internal communications concerning the decision of how Respondent was going to recoup the healthcare costs from employees were created during the normal course of business and were not prepared because of the prospect of litigation. Neither were the bargaining notes. Here, Respondent has only asserted a blanket claim of confidentiality, and has not established why particular information would trigger specific confidentiality concerns. *Mission Foods*, supra 345 NLRB at 792.Finally, although Respondent was willing to bargain over a confidentiality agreement concerning non-public information about its outside payroll vendor, Respondent has not been willing to bargain

with the Union concerning its confidentiality concerns to accommodate the Union's legitimate interest in relevant information about the information at issue here. *Id*. at 791-792. Accordingly, Respondent's defenses must fail and Respondent's refusal to provide items 1 and 5 of the September 11, 2014 information request and item 3 of the September 18, 2014 information request violated Section 8(a)(5) of the Act.

3. The 401(k) Information Requests

On September 5, 2014, the Union requested certain information concerning Respondent's implementation of the new Article 23.3.[25] Items 1 and 2 sought employees' earnings statements so that the Union could determine whether Respondent was properly implementing Article 23.3. As this information relates to employees' wages and benefits, it is clearly relevant. *Bryant & Stratton Business Institute*, 323 NLRB 410 (1997). Indeed, Respondent does not argue otherwise. However, Respondent has gone out of its way to provide the information in ways other than how it would be useful and responsive to the Union. Thus, Respondent provided the information in a pdf form without headings or other identifying information. Respondent's witness Carol Fox even admitted at the hearing that the only way that the Union could have understood the information in the pdf was to go back and ask her specifically about the information provided. It would not be understood as it was given. (T. 301, 316) Even so, the pdf still did not contain all the information that the Union had requested. (T. 317) Respondent was required to provide this information in a useful form. *Detroit Newspaper Agency*, supra 317 at 1072-1073; *General Electric Co.*, 290 NLRB 1138, 1147 (1988).

Respondent asserted that providing the earnings statements going forward as requested in Item 2 was burdensome because it took Respondent four minutes to print out one earnings

[25] Paragraphs 9(a) and (l) of the Second Amended Consolidated Complaint. (GCX-1(dd))

statement. While that may be accurate, Respondent has provided earnings statements in the past to the Union when requested. Furthermore, furnishing existing data has been found not to be unduly burdensome on employers See e.g., *Taylor Forge & Pipe Works*, 113 NLRB 693, 694 (1955) (noting an information request where the employer was not required to draw up accounts or make extensive surveys but was only requested to turn over existing information was not unduly burdensome). Respondent also argues that it did eventually provide the information by giving the Union access to the information via computer access. However, Respondent only attempted to reach an accommodation on this with the Union a year after the original request when it had to provide the information pursuant to a subpoena. It was not until November 17, 2015, more than 14 months after the Union requested the information, that the Union was able actually to access the Southampton unit employees' earnings statements, although it is not clear if the Union can print them out. Clearly, this was an unreasonable delay. *Postal Service*, 332 NLRB at 640. Accordingly, Respondent violated Section 8(a)(5) when it refused to provide Item 1 and unlawfully delayed providing item 2 of the September 5, 2014 information request.

Items 6 and 8 of the Union's September 5, 2016 information request sought Respondent's internal communications on the implementation of Art. 23.3. This information is presumptively relevant as it related to a term and condition of employment. See e.g., *Columbia College Chicago*, 360 NLRB No. 122, slip op at 2, 8 (2014) (internal communications concerning a change to a rollover system required to be produced). In any event, the Union explained that this information was relevant because during negotiations Respondent never communicated to the Union that there would be any problem implementing Art. 23.3. As the information could have assisted the Union in processing its grievance, the Union provided a sufficient showing why the information is necessary and relevant.

Respondent has not provided the information contending that it is not relevant and was aimed at discovering Respondent's legal theory and strategy for the upcoming arbitration. In *Detroit Newspaper Agency*, supra 317 NLRB at 1072-1073, the Board stated that information gathered in response to specific legal action is privileged from disclosure, citing *General Dynamics Corp*., 268 NLRB 1432, 1432 (1984) . However, the Board found that the "mere potential for litigation does not constitute a legitimate claim of confidentiality." Id.; *New England Telephone Co*., 309 NLRB 196 (1992). Here, Respondent has failed to establish its claim of confidentiality as it has not shown that any of the information requested in items 6 and 8 was created or gathered in response to the Union's grievance. Moreover, the Union was not seeking Respondent's legal theory or strategy. It was seeking factual information to evaluate the merits of its grievance. Accordingly, Respondent violated Section 8(a)(5) when it failed and refused to provide items 6, and 8 of the September 5, 2014 information request.

With regard to the Union's September 18, 2014 information request for Respondent's bargaining notes[26] concerning what is now Article 23.3, the Union has established the relevancy under the "liberal discovery-type standard" which permits the union access to a broad scope of information potentially useful for the purpose of effectuating the bargaining process. *NLRB v. Acme Industrial*, supra, 385 U.S. at 437 fn. 6. There only needs to be "the probability that the desired information was relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." *Id*. at 437. The Union requested copies of all bargaining proposals and agreements regarding the 401(k) issue during collective bargaining negotiations in order to establish Respondent's intention with respect to the 401(k) contributions given that the parties were at such odds with respect to Article 23.3. The Union made clear that it was seeking

[26] See paragraphs 9(d) and (o) of the Second Amended Consolidated Complaint. (GCX-1(--))

this information to evaluate the merits of its arbitration. The Union has the right to determine the meritorious nature of its grievance prior to proceeding all the way to arbitration. *Id. at* 438-439; *Safeway Stores, Inc.,* 236 NLRB 1126 fn. 1 (1978), enfd. 622 F.2d 425 (9th Cir. 1980), cert. denied 450 U.S. 913 (1981). Thus, the Union met its burden of stating the relevance of the requested information.

Respondent refused to provide the information requested in the Union's September 18, 2014 request, arguing that the information was not relevant, the Union was seeking Respondent's legal theory, pre-arbitral discovery and that the information was confidential. With regard to Respondent's first argument, as shown above, the Union has established a reasonable basis for seeking the information. Respondent might argue that based on *King Scoopers, Inc*., 332 NLRB 23 (2000), the Union is, nonetheless, not entitled to bargaining notes. In that case, the ALJ, affirmed by the Board, found that the employer did not violate the Act by failing to provide bargaining notes because, while the Board uses a liberal discovery standard of relevancy, "the contract issue was so clear and unambiguous that the request for information appears to be of no use to the union." Id. at 30. In the instant case, the Union has a valid reason to request Respondent's notes, because Respondent's bargaining notes could resolve the ambiguity of what Respondent intended in Article 23.3.

Respondent's argument that the Union is engaged in pre-arbitral discovery must also fail. Respondent is correct that the Union sent its requests for information on the Article 23.3 issue after it filed for arbitration. Although the Board has declined to find a Section 8(a)(5) violation when the party seeks the information as a means of discovery, see e.g., *California Nurses Association,* 326 NLRB 1362 (1998) (finding that the union did not have disclose the names of its witnesses for arbitration under Section 8(b)(3) of the Act because it delved into Respondent's

strategy in arbitration and amounted to pretrial discovery); cases issued both before and after it, state that the duty to supply information extends to a request for material to prepare for arbitration. See, e.g., *Fleming Cos.*, 332 NLRB 1086, 1094 (2000) ("Employer must furnish information that is necessary to property prepare for arbitration as long as the information is relevant to the grievance scheduled for arbitration."); *Lansing Automakers Federal Credit Union*, 355 NLRB 1345, 1353 (2010); *Jewish Federation Council*, 306 NLRB 507 fn. 1 (1992); *Chesapeake & Potomac*, 259 NLRB 225, 227 (1981), enfd. 687 F.2d 633 (2d Cir. 1982).

Respondent's defense fails because the information was not requested for discovery purposes. Although the Union did file for arbitration prior to requesting this information, the record clearly shows that the Union had to file for arbitration at that time or the grievance would not have been able to proceed. The Union, as in other grievances it has filed, was preserving its rights to go to arbitration while continuing to evaluate the merits of its grievance in light of what it believed the parties agreed to in negotiations—that employees would receive pre-tax contributions directly into their 401(k) accounts—and what has subsequently occurred—that employees have received additional wages on which they are taxed rather than Respondent making these contributions pre-tax directly into employees 401(k) accounts. If Respondent's collective bargaining notes contained discussions regarding the 401(k) issue that were unfavorable to the Union, then the information could potentially persuade the Union not to continue its grievance. "One of the functions of arbitration procedures is to permit the union the opportunity to evaluate the merits of the grievance, at whatever stage, and perhaps withdraw it if necessary, once it receive[s] the information." *Oncor Elec. Delivery Co., LLC*, 364 NLRB No. 58, slip op. at 21 (2016), citing *Ormet Aluminum*, supra 335 NLRB at 789.

Furthermore, the information sought by the Union is very different from the types of information sought in *California Nurses Association,* supra, that the Board viewed as being a substitute for pretrial discovery. See, e.g., *Fleming Cos.*, 332 NLRB 1086, 1094 (2000) (witness statements); *Lansing Automakers Federal Credit Union*, 355 NLRB 1345, 1353 (2010); *Jewish Federation Council*, 306 NLRB 507 fn. 1 (1992); *Chesapeake & Potomac*, 259 NLRB 225, 227 (1981), enfd. 687 F.2d 633 (2d Cir. 1982). The Union is not seeking names of witnesses Respondent intends to call or the evidence Respondent intends to rely upon at the arbitration proceeding.

Respondent's confidentiality argument also lacks merit. Respondent has certainly not demonstrated that it had a sufficient legitimate and substantial confidentiality interest in the information as to have justified its nondisclosure to the Union. It just asserted a blanket confidentiality defense. *Pennsylvania Power Co.*, supra; Moreover, even if it had established that the information was confidential, Respondent nevertheless failed to bargain, as it was required to do, with the Union over a possible accommodation regarding the internal communications and bargaining notes although the Union clearly communicated to Respondent that it was willing to do so. Respondent cannot simply raise its confidentiality concerns, but rather must come forward with some offer to accommodate its concerns. Respondent has the burden of formulating a reasonable accommodation. *Burgess Medical Center,* 342 NLRB 1105, 1106 (2004).

Based on the above, it is clear that Respondent has failed to provide relevant information to the Union, has failed to make a valid confidentiality claim, and, even if it has established a confidentiality claim, has failed to bargain to impasse with the Union over its confidentiality concerns, and has failed to demonstrate that the requested materials were prepared by a party or

the party's representatives in anticipation of litigation. Accordingly, Respondent should be found to have violated Section 8(a)(5) by its failure and refusal to provide the requested information discussed above in the Union's September 11 and 18, 2014 information requests.

4. The November 13 and 18, 2014 Ebola Training Information Request

On November 13 and 18, 2014 and again on December 1, 2014, the Union requested a copy of the Ebola training provided to Morgantown employees.[27] Respondent admittedly failed to provide this information. An information request pertaining to employee training is presumptively relevant as it is a mandatory subject of bargaining. *Hospital of Bartow, Inc*., 361 NLRB No. 34 slip op. at 2 (2014); *Southern California Gas Company*, 346 NLRB 449 (2006) See also *A.S. Asbell Company*, 230 NLRB 1112, 1114 (1977). As such, the Union was not required to independently establish the relevancy of the training program, and Respondent's failure to furnish the information was unlawful. While Respondent contends that it has no obligation to provide information concerning the Ebola training because the employees don't handle Ebola waste that defense fails. At the time of the request, Ebola was a serious concern. Indeed, Respondent's training as described by Respondent's Safety Director Ronald Maggiaro involved making sure that employees were familiar with Ebola waste containers so that employees would not handle that waste. (T. 230, 233) The fact that Respondent considered the training to be sufficiently relevant to employees' jobs to provide the training also establishes relevance for the Union's legitimate purposes. *Southern California Gas Company*, supr.

Respondent's assertion that its offer to allow the Union to view the presentation was sufficient to comply with its duty to provide the information is without merit. The Union established its need to have experts look at the information in question, which also provides a

[27] Paragraphs 9(e) and (p) of the Amended Second Consolidated Complaint. (GCX-1(dd))

basis to require Respondent to provide a copy of requested information as opposed to merely allowing the Union to view it. *Union Switch & Signal*, 316 NLRB 1025, 1032-1033 (1995); cf. *American Telephone & Telegraph Co*., 250 NLRB 47, 54 (1980), *Laidlaw Waste Systems*, 307 NLRB 1211, 1214 (1992).

Respondent's claim of confidentiality should also be rejected. Respondent showed this training to employees. Thus, it clearly could not be considered so confidential as to preclude it from providing it to the Union. Moreover, Respondent never proposed an accommodation that would have satisfied its supposed confidentiality concerns. Indeed, it ignored the Union's offer to bargain over confidentiality. (T. 324) It thereby revealed that it had no real interest in satisfying it statutory obligations. *Stella Doro Biscuit Company, Inc*., 355 NLRB 769, 774 fn. 14 (2010). Accordingly, Respondent's failure to provide this information is a violation of Section 8(a)(5) of the Act.

5. The December 1, 2014 Handbook Information Request

On December 1, 2014, the Union requested a copy of the handbook in use at the Morgantown facility, in response to Respondent's assertion that employees were subject to confidentiality provisions in its handbook.[28] Respondent's obligation to provide a copy of the employee handbook in existence in December 2014 cannot be seriously disputed. Handbooks covering unit employees are presumptively relevant. See e.g. *Strategic Resources*, 364 NLRB No. 42, slip op. at 20 (2016).. While Respondent may have been working on a new handbook, that does not excuse Respondent from providing the one already in existence that Fox claimed in her email employees had been required to sign. Indeed, even if there had not been an existing handbook, Respondent would have been required to disclose that fact in response to the

[28] Paragraphs 9(e) and (r) of the Amended Second Consolidated Complaint. (GCX-1(dd))

information request. Respondent never provided the handbook in existence in December 2014 nor did it claim that it did not have one. Moreover, the fact that Respondent has provided the Union with a newer handbook, bearing a copyright date of 2015, does not negate its earlier failure to respond to the Union's information request. Accordingly, Respondent's failure and refusal to provide this information should be found to be in violation of section 8(a)(5) of the Act.

6. The November 24 2014 ,Vehicle Backing Program Information Request

On November 24, 2014, the Union requested a copy of Respondent's vehicle backing program.[29] As with the Ebola training discussed above, this training program was presumptively relevant, especially since Respondent cited it in its discipline of a unit employee. *Hospital of Bartow, Inc*., supra; *Southern California Gas Company*, supra. As such, the Union was not required to independently establish the relevancy of the vehicle backing program, and Respondent's delay in furnishing the information until March 2, 2015 was unlawful.

According to Dagle and Schoennagle, Respondent volunteered in either November 2014 or January 22, 2015 that its program included both a video and a power point presentation. Given that, it is clearly unconvincing that Respondent claimed in its March 2, 2015 letter that it did not initially understand that the information request included the video. While it is possible that Respondent is prohibited from copying and distributing the video to the Union under the terms of its purchase, Respondent nonetheless did not provide an adequate response to the Union until March 2, 2015. Simply claiming that the video was proprietary did not give the Union any reason to understand that the proprietary rights in question were not Respondent's until March 2, 2015. With respect to the power point presentation, unlike, the video, Respondent created it and has complete ownership of it. It has not stated any legitimate reason why it chose to withhold a copy

[29] Paragraphs 9(f) and (q) of the Amended Second Consolidated Complaint. (GCX-1(dd)

of its power point presentation until it finally provided it on March 2, 2015. Moreover, for the same reasons stated above with regard to the Ebola training, Respondent's confidentiality argument lacks merit. Respondent showed this training to employees. Thus, it clearly could not be considered so confidential as to preclude it from providing it to the Union.

Although Respondent eventually satisfied its obligations with respect to the information request for the vehicle backing program by giving the Union a link to the video and the power point presentation, it unlawfully delayed in doing so from November 24, 2015 to March 2, 2015. As the information requested was neither complex nor difficult to retrieve, Respondent's delay in providing the information should be found to be a violation of Section 8(a)(5) of the Act. *Postal Service*, 308 NLRB 547, 547 fn. 1, 551 (1992); *Bundy Corp., supra* 292 NLRB at 672.

7. Information Related to the Soubra Grievance

On December 11, 2014, the Union asked for a variety of information concerning the incident that occurred between employee Soubra and Supervisor Lobb.[30] Items 2, 3 and 4 sought the names of witnesses, their statements, and Respondent's investigative notes of the incident, which Respondent refused.[31] The list of names is a presumptively relevant piece of information being sought by the Union. See *Metropolitan Edison Co.*, 330 NLRB 107, 107-108 (1999)(finding violation for failing to accommodate information request seeking names of informants who witnessed employee theft); *Fairmont Hotel Co.*, 304 NLRB 746, 746 fn. 3 (1991)(Board affirmed ALJ decision finding Respondent violated Section 8(a)(5) and (1) by, among other things, failing to disclose the identities of the employee-witnesses for some 3 months after the union first requested them.); *Boyertown Packaging Corp.*, 303 NLRB 441, fn. 4

[30] Paragraphs 9(g) and (s) of the Second Consolidated Complaint. (GCX-1(--))
[31] Although Reiss apparently gave one name of a witness to Dagle, he did not provide all the names. (T.)

(1991); *Transport of New Jersey*, 233 NLRB 694 (1977) (an employer has a duty to furnish the union, upon request, the names of witnesses to the events upon which an employee's discipline is based). The Union has also established the relevancy of requesting the witness statements, and Respondent's investigative notes of the incident in two ways: One, as part of the investigation and evaluation of the Soubra grievance. Two, as part of its duty to investigate safety concerns of employees within the plant.

Furthermore, the Board no longer exempts witness statements from an employer's general obligation to comply with union requests for information. *Piedmont Gardens*, 362 NLRB No. 139 (2015), over-ruling *Anheuser-Bush, Inc.*, 237 NLRB 982 (1978) In this regard, the Board found that the same balancing test applied for witness statements as for other information asserted to be confidential. The party asserting the confidentiality defense has the burden of proving that it has a legitimate and substantial confidentiality interest in the information, and that it outweighs the requesting party's need for the information. *Piedmont Gardens*, supra. The Board treats investigative notes similarly. See e.g. *Northern Indiana Public Service Co.*, 347 NLRB 210 (2006).

Respondent did not provide a rationale for denying this information. Assuming that Respondent may argue that the information in items 2, 3 and 4 are confidential and can be withheld from the Union, that argument must fail. Respondent has not shown how this information is confidential, or that it promised confidentiality to witnesses. Even more importantly, Respondent has not offered to reach any accommodation with the Union regarding this information.

The last two items of the December 11, 2014 information request had to do with the discipline imposed on Lobb and whether there were previous instances of similar conduct in his

personnel file. Requests for information concerning persons outside the bargaining unit such as supervisors require a special demonstration of relevance. The requesting party must show "either (1) that the union demonstrated relevance of the nonunit information, or (2) that the relevance of the information should have been apparent to the [employer] under the circumstances." *Oncor Elec. Delivery Co., LLC*, 364 NLRB No. 58, slip op. at 5-6, citing *Disneyland Park*, 350 NLRB 1256, 1258 (2007) (citations omitted). See also *Postal Service*, 310 NLRB 391, 391-392 (1993). Here, the Union has shown that the requested information was relevant to its representation of the unit. The Union sought the information because it was concerned that Supervisor Lobb had previously engaged in similar behavior and was concerned about the safety of unit employees. (T. 152-153) Article 12.02 of the collective bargaining agreement states, "It is the Employer's responsibility to ensure all work places, trucks, and equipment are in proper working order and safe operating conditions according to law." Respondent was obligated to provide information concerning a supervisor's violent or erratic behavior based on the Union's legitimate concern for the physical and psychological safety of unit employees while in the work place. This provision of the contract gives the Union standing to grieve its contention that Respondent's failure to adequately discipline Lobb poses a threat to the safety of unit employees. The Union has therefore demonstrated the relevance of its information request and the Employer's obligation to comply with it. Respondent nonetheless refused to provide this information. Again, Respondent, while asserting this information was confidential, failed to offer any accommodation.

Respondent contends that it showed the discipline to the Union, therefore satisfying its duty to provide information for item 5. As shown above, that does not satisfy Respondent's obligation. Respondent was required to provide a copy of requested information as opposed to merely allowing the Union to view it. *Union Switch & Signal*, supra;

In short, the information requested in the Union's December 11, 2014 request is all relevant. Respondent has failed to establish that the information is so confidential that it was relieved of its obligation to provide it. And, even had it made that showing, Respondent has clearly failed to offer any accommodation to the Union. Thus, Respondent should be found to have violated Section 8(a)(5) by failing and refusing to provide the information requested in the Union's December 11, 2014 information request.

8. Information relating to the Code of Conduct and Harassment Training

On December 30, 2014, the Union requested a copy of Respondent's code of Conduct and Harassment Training that Respondent had referenced in its first step grievance response to the Soubra grievance concerning Supervisor Lobb.[32] Respondent had notified the union that it would be giving this training to all employees at Morgantown. The Union has the right to information concerning the harassment training received by unit employees as it is presumptively relevant. *Southern California Gas Company*, supra; *Hospital of Bartow, Inc*., supra; *A.S. Asbell Company, supra*; *Living and Learning Centers, Inc*., supra. Respondent has admittedly failed to provide this information. Simply letting the Union sit through a showing of the video will not allow the Union to make effective reference to it, if and when, employee training ever becomes an issue in grievance processing. Respondent was required to provide this information.

Respondent's claim of confidentiality here should be rejected. As with the Ebola training and Vehicle Backing Program training described above, Respondent showed this training to employees. It clearly could not be considered so confidential as to preclude it from providing it to the Union. Moreover, Respondent never proposed an accommodation that would have satisfied its' supposed confidentiality concerns. Indeed, it ignored the Union's offer to bargain

[32] Paragraphs 9(h) and (t) of the Amended Second Consolidated Complaint. (GCX-1(dd))

over confidentiality. (T. 65) It thereby revealed that it had no real interest in satisfying it statutory obligations. *Stella Doro Biscuit Company, Inc.*, supra.

Furthermore, Respondent's claim that it has a proprietary interest in the harassment training should also be rejected. While Respondent has a property interest in the video, it has not articulated why providing a copy of the video, with proper safeguards concerning further distribution, would compromise any of Respondent's legitimate interests. Accordingly, Respondent's failure to provide this information is a violation of Section 8(a)(5) of the Act.

9. *Information Relating to the TMX Meeting*

On July 15, 2015, the Union requested copies of all documents concerning or relating to the TMX meetings with Morgantown employees.[33] On August 7, Respondent provided a power point presentation that was shared with employees regarding the result of TMX survey. Respondent, however, omitted several slides that it asserted contained confidential information because it showed comparative data with non-represented locations.

The information that was shown to employees compared the satisfaction of Morgantown unit employees with their terms and conditions of employment with those of Respondent's employees nationwide. As a result, the information is presumptively relevant. Thus, Respondent was required to provide this information to the Union. Moreover, the Union established the relevance as Respondent clearly compared the results of the Morgantown unit employees to its other employees. Respondent's contention that this information is confidential lacks merit. Respondent showed it to the Morgantown unit employees. Thus, it clearly could not be considered so confidential as to preclude it from providing it to the Union. Respondent has failed

[33] Paragraphs 9(i) and (u) of the Amended Second Consolidated Complaint. (GCX-1(dd))

to demonstrate a legitimate and substantial confidentiality interest in the TMX survey presentation. Moreover, Respondent never proposed an accommodation that would have satisfied its' supposed confidentiality concerns. *Stella Doro Biscuit Company, Inc*., supra. Accordingly, Respondent should be found to have violated Section 8(a)(5) by failing and refusing to provide the information requested in the Union's July 2, 2015 information request.

D. Respondents' Overbroad Policies Violate Section 8(a)(1) of the Act

1. Applicable Legal Standards

Section 8(a)(1) of the Act makes it an unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7 [of the Act]." Section 7, the cornerstone of the Act, provides that:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities.

The maintenance of a rule that would reasonably have a chilling effect on employees' Section 7 activity violates Section 8(a)(1). *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998), enfd. mem., 203 F.3d 52 (D.C. Cir. 1999). In determining whether a challenged rule is unlawful, the Board must give the rule a reasonable reading. *Palms Hotel and Casino*, 344 NLRB 1363, 1367 (2005); *Lutheran Heritage Village-Livonia*, 343 NLRB 646, 646 (2004). The Board first should decide whether the rule explicitly restricts activities protected by Section 7. *Id.* at 646. If the rule does not explicitly restrict activity protected by Section 7, the violation is dependent upon a showing of one of the following: (1) employees would reasonably construe the language to prohibit Section 7 activity; (2) the rule was promulgated in response to union activity; or (3)

the rule has been applied to restrict the exercise of Section 7 rights. *Palms Hotel and Casino*, supra at 1367; *Lutheran Heritage Village-Livonia*, supra at 646.

In determining how an employee would reasonably construe a rule, particular phrases should not be read in isolation, but rather should be construed in context. *Lutheran Heritage Village-Livonia*, supra. Rules that are ambiguous as to their application to Section 7 activity and contain no limiting language or context that would clarify to employees that the rule does not restrict Section 7 rights are unlawful. *Costco Wholesale Corp.*, 358 NLRB No. 106, at slip op. at 3 (2012) (rule that did not present any accompanying language restricting its application would be reasonably read to apply to protected concerted activities). See also *University Medical Center*, 335 NLRB 1318, 1320-22 (2001) (work rule that prohibited "disrespectful conduct towards [others]" unlawful because it included "no limiting language [that] removes [the rule's] ambiguity and limits its broad scope"), *enforcement denied in rel. part*, 335 F.3d 1079 (D.C. Cir. 2003). Any ambiguity in the rule must be construed against the employer who promulgated and drafted it. *Karl Knauz Motors, Inc.*, supra 358 NLRB at 1755; *Palms Hoteland Casino*, supra at 1368; *Norris I O'Bannon*, 307 NLRB 1236, 1245 (1992).

For a rule to be unlawful, it is sufficient to show only that there exists a reasonable interpretation that the rule infringes Section 7. It is not necessary to show that the overly broad interpretation is the only reasonable one. *Double D Construction Group, Inc.*, 339 NLRB 303, 303-304 (2003); see *Jordan Marsh Stores Corp.*, 317 NLRB 460, 463 (1995) ("Employees need not be lawyers, parsing every phrase to seek out permissible constructions.")

*2. **Camera and Video Use Policy***

Employees have a Section 7 right to photograph and make recordings in furtherance of their protected concerted activity, including the right to use personal devices to take such

pictures and recordings. See *Hawaii Tribune-Herald*, 356 NLRB 661 (2011), enfd. sub. nom. *Stephens Media, LLC v. NLRB*, 677 F.3d 1241 (D.C. Cir. 2012); *White Oak Manor*, 353 NLRB 795, 795 (2009), incorporated by reference, 355 NLRB 1280 (2010), enfd. mem. 452 F.App'x 374 (4th Cir. 2011). Rules placing a total ban on such photography or recordings, or banning the use or possession of personal cameras or recording devices are unlawfully overbroad where they would reasonably be read to prohibit the taking of pictures or recordings on non-work time. See e.g., *T-Mobile USA, Inc.*, 363 NLRB No. 171, slip op. at 4-5 (2016) (finding prohibition against recording to be unlawfully overbroad where rule failed to distinguish between recordings protected by Section 7 and included within its scope recordings created during non-work time and in non-work areas); *Whole Foods Market, Inc*., 363 NLRB No. 87, slip op. at 4 (2015) (finding employer's broad and unqualified language prohibiting work-place recordings would reasonably be read by employees as prohibiting activity protected by Section 7); *Rio All-Suites Hotel & Casino*, 362 NLRB No. 190, slip op. at 4 (2015)(Board noted that photography and audio or video recording in the workplace are protected by Section 7 if employees are acting in concert for their mutual aid and protection and no overriding employer interest is present).

Respondent's Camera and Video Use policy[34] (GCX-30) prohibits employees "from taking pictures with a personal or company-issued cell phone camera of any Stericycle property, operation, or equipment without the permission of their supervisor/manager" and "from taking video or audio recordings with a personal or company camera, camcorder, or other device of any Stericycle property, operation or equipment without the permission of their supervisor/manager." This policy is broad and unqualified. It does not make any exceptions for Section 7 activity nor does it differentiate between work time and work areas and non-work time and non-work areas.

[34] Paragraph 6(a)(b) of the Amended Second Consolidated Complaint. (GCX-1(dd),(hh)).

According to Respondent, its Camera & Video Use policy is not unlawful because the policy is limited in scope and aimed at protecting physical equipment and property as well as proprietary information and processes. Contrary to Respondent, the Camera & Video Use policy is not limited in scope. It is a blanket rule disallowing the use of cameras and video recorders at any time on company property, without permission from a supervisor. The language of the policy does not make any exceptions so employees would reasonably interpret the rule to prohibit employees from taking pictures of safety violations.

Although Respondent has a legitimate proprietary interest in its Chem Clave system (T. 232, 241), a total ban on taking pictures, video or audio recordings on any employer property without permission from a supervisor is not narrowly tailored to address that concern. Respondent did not present evidence of an overriding proprietary interest in such a broad ban on camera and recording devices and did not present sufficient evidence to show why it could not make an exception in its policy for Section 7 activity. *T-Mobile USA, Inc*., supra 363 NLRB slip op. at 4 ("That the Respondent's proffered intent is not aimed at restricting Section 7 activity does not cure the [recording restriction] rule's overbreadth, as neither the rule nor the proffered justifications are narrowly tailored [emphasis added] to protect legitimate employer interests or to reasonably exclude Section 7 activity from the reach of the prohibition."). Cf. *Flagstaff Medical Center*, 357 NLRB No. 65 (2011)(Board found policy prohibiting taking pictures of patients, equipment, property or facilities to be lawful as it was designed and written to protect the privacy interests of patients).

The Camera and Video Use policy is not set forth in a manner that informs employees that the limitation is only designed to protect a legitimate interest; therefore, employees are in danger of interpreting it to restrict Section 7 activity. Thus, the rule as currently stated is

unlawfully broad without further clarification for employees to understand what it really means. As any lack of clarity goes against the issuer of the rule, Respondent's maintenance of the Camera and Video Use Policy should be found to be a Section 8(a)(1) violation.

3. Use of Personal Electronics in the Workplace Policy

Respondent maintains a Use of Personal Electronics in the Workplace policy[35] (GCX-31) which restricts when employees can use a cell phone. While the rule appears to be lawful because it allows use of phones during break time, the concomitant requirement that employees keep their phones in their lockers during work time, and the rule prohibiting employees from entering work areas with their phones, results in an unlawful rule. The rule requiring electronic devices to stay in an employee's locker except during break times is tantamount to prohibiting employees from entering work areas with electronic devices during non-work time. Respondent argues that the rule was intended to protect the health and safety of employees while working. While Respondent has a legitimate interest in safety given the type of enterprise it runs, Respondent's rule is not narrowly tailored to address Respondent's concern. *Whole Foods Market, Inc*., 363 NLRB No. 87, slip op. at 4 (2015); *T-Mobile USA, Inc., supra* 363 NLRB slip op. at 4. Similar to the Camera and Video Use policy, shown to be unlawful above, the language of this policy does not make any exceptions so employees would reasonably interpret the rule to prohibit employees from taking pictures of safety violations while on non-working time. Indeed, Dagle testified that at least one employee at Morgantown was concerned about being disciplined for using his cellphone in a work area and therefore did not use his cell phone to document a safety violation. (T. 145) The policy here unlawfully inhibits Section 7 activity – employees on break should have the right to go to their lockers, grab a camera, and go back to their work areas

[35] Paragraph 6(c) of the Amended Second Consolidated Complaint. (GCX-1(dd),(hh)).

to document safety and unfair labor practice situations. Respondent did not present sufficient evidence to show why it could not make an exception in its policy for Section 7 activity. Accordingly, Respondent's maintenance of its Use of Personal Electronics in the Workplace policy should be found to violate Section 8(a)(1).

4. Retaliation Policy

It is well settled that Section 7 of the Act grants employees the right to discuss wages and other terms and conditions of employment with other employees, and the Board has repeatedly found confidentiality rules unlawful if employees would reasonably construe the rules to prohibit those protected discussions. See, e.g., *Battle's Transportation, Inc.*, 362 NLRB No. 17, slip op. at 1-2 (2015); *Fresh & Easy Neighborhood Market*, 361 NLRB No. 8, slip op. at 2 (2014); *Cintas Corp.*, 344 NLRB 943, 943 (2005), enfd. 482 F.3d 463 (D.C. Cir. 2007). It is likewise well settled that employees have a Section 7 right to discuss their conditions of employment with third parties, such as union representatives, Board agents, and the public in general, and the Board has invalidated rules prohibiting such third-party communication. See, e.g., *DirecTV U.S. DirecTV Holdings, LLC*, 359 NLRB 545, 547 (2013), reaffirmed and incorporated by reference, 362 NLRB No. 48 (2015); *Hyundai America Shipping*, 357 NLRB 860, 872 (2011), enfd. in part 805 F.3d 309 (D.C. Cir. 2015); *Kinder-Care Learning Centers, Inc.*, 299 NLRB 1171, 1171-1172 (1990).

Respondent's retaliation policy explicitly prohibits the disclosure of "complaints and the terms of their resolution."[36] It is not at all clear from the handbook that the rule is limited to sexual harassment complaints and resolutions. Respondent lists a variety of types of harassment, but that list is in another section of the handbook, between its Affirmative Action policy and its

[36] Paragraph 6(a)(iv) of the Amended Second Consolidated Complaint. (GCX-1(dd),(hh)).

prohibition on the use or possession of firearms and dangerous weapons on company property. The Board has found that employees who submit a complaint or participate in a complaint do not have to agree to keep the complaint, report or investigation confidential. *Fresenius USA Mfg., Inc.*, 362 NLRB No. 130, slip op at 2 (2015). Complaints may involve issues regarding wages, hours and working conditions that employees have a right to discuss with each other in order to make common cause. Furthermore, Respondent's rule is not limited to Respondent's representatives, as it says that "all parties involved" will keep complaints and the terms of their resolution confidential. As the policy does not exempt protected communications with third parties such as union representatives, Board agents, or other governmental agencies concerned with workplace matters, employees would reasonably interpret the rule as prohibiting such communications. Limiting with whom employees can discuss matters "… reasonably tends to inhibit employees from bringing work-related complaints to, and seeking redress from, entities other than the Respondent and restrains the employees' Section 7 rights to engage in concerted activities for collective bargaining or other mutual aid or protection." *Kinder-Care Learning Centers*, supra 299 NLRB at 1172; *DirecTV U.S. DirecTV Holdings, LLC*, supra 359 NLRB at 547.

The fact that the policy sets forth no consequences if confidentiality is not maintained is immaterial. The lack of clarity of this rule goes against Respondent as the issuer of the rule. Because of these reasonable interpretations, the policy is overbroad. Accordingly, Respondent's maintenance of the Confidentiality of Harassment Complaints should be found to be a Section 8(a)(1) violation.

5. *Electronic Communication Policy*

The Board's decision in *Purple Communications,* 361 NLRB No. 126 slip op. at 14

(2014) adopted a presumption that employees who are provided work access to an employer's email system have a presumptive right to use the employer's email system during non-working time to engage in union and protected concerted activities. This right can be rebutted if the employer establishes special circumstances to justify its restriction on non-business use of its email system. *Id.*

Respondent's Electronic Communication Policy limits use of personal telephone calls and emails to urgent family matters.[37] . Respondent has not made a showing of special circumstances to justify its restriction on non-business use of its email system. Respondent's restrictive policy limits employees from discussing working conditions, even on their own time, via the use of email or other electronic communications. This could significant hinder employees' ability to engage in protected concerted activity. *Id*. Thus, Respondents' prohibition regarding the use of email except for urgent family matters should be found to violate Section 8(a)(1) of the Act.

6. ***Use of Personal Electronics Policy (Handbook)***

Similar to Respondent's Use of Personal Electronics Policy described above, the handbook contains a Use of Personal Electronics policy[38] which restricts when employees can use a cell phone. The policies are almost identical. For the same reasons stated above, Respondent's maintenance of this policy, should be found to violate Section 8(a)(1) of the Act.

7. ***Personal Conduct Policy***

Recognizing that the Act does not protect employee conduct aimed at disparaging an

[37] Paragraph 6(a)(v) of the Amended Second Consolidated Complaint. (GCX-1(dd),(hh)).
[38] Paragraph 6(a)(i) of the Amended Second Consolidated Complaint. (GCX-1(dd),(hh)).

employer's product, as opposed to conduct critical of an employer's labor policies or working conditions, the Board found that rules that did not contain language to clearly show that they were aimed only at unprotected activity were unlawful. See e.g. *Casino San Pablo*, 361 NLRB No. 148, slip op. at 3 (2014). In *Lafayette Park Hotel*, 326 NLRB 824, 828 (1998), enfd. mem., 203 F.3d 52 (D.C. Cir 1999), the Board found the employer's prohibition on the following conduct to be unlawfully overbroad: "Making false, vicious, profane or malicious statements toward or concerning the Lafayette Park Hotel or any of its employees." The Board reasoned that the prohibition failed to differentiate between false and maliciously false statements and thus would cause employees to refrain from engaging in protected activities. *Id*.

Respondent's Personal Conduct policy[39] states that "Conduct that maliciously harms or intends to harm the business reputation of Stericycle will not be tolerated." The policy gives as an example "Engaging in behavior that is damaging to Stericycle's reputation." Although Respondent's policy uses the word "maliciously" in the preface, that is not dispositive of the issue. The language of Respondent's policy here does not adequately differentiate between unprotected maliciously false statements and other potentially false or negative statements that would be protected by the Act. *Id*. Thus, Respondent's policy would unlawfully inhibit employees from engaging discussion of unfavorable terms and conditions of employment.

Furthermore, Respondent has not limited the rule to allow for protected activity. See *Costco Wholesale Corp.* 358 NLRB No. 106 supra at 1-2 (2012) (rule prohibiting comments that "damage the Company, defame any individual or damage any person's reputation" to be unlawfully overbroad as it failed to limit its application to permit protected concerted activities). The statement is sufficiently vague and is accompanied by a threat of discipline or termination,

[39] Paragraph 6(a)(ii) of the Amended Second Consolidated Complaint. (GCX-1(dd),(hh)).

causing employees to reasonably construe the rule to prohibit Section 7 activity, in violation of Section 8(a)(1). *Lutheran Heritage Village-Livonia,* 343 NLRB 646 (2004). As before, any lack of clarity goes against the issuer of the rule and the true meaning of this rule is open to interpretation. Accordingly, Respondent's maintenance of this policy should be found to be a Section 8(a)(1) violation.

8. *Conflict of Interest Policy*

Section 7 of the Act protects employees' right to engage in concerted activity, even if that activity is in conflict with the employer's interest, such as protesting in front of the company, organizing a boycott of the company and soliciting for union support on non-work time. The Board has concluded that an employer can not prohibit employees from engaging in conduct that could conflict with its interests because those interests could include union interests. *The Sheraton Anchorage,* 362 NLRB No. 123 (2015). If an employer's conflict-of-interest rule would reasonably be read to prohibit such activities, the rule will be found unlawful. See *HTH Corp.*, 356 NLRB 1397, 1398, 1421 (2011), enfd. 693 F.3d 1051 (9th Cir. 2012). Rules that are clearly limited to legitimate business interests are not unlawful.

Respondent's Conflict of Interest policy[40] against activities that "adversely reflect upon the integrity of the company" is overbroad. The policy does not set forth examples nor does it clarify a legitimate business interest so that employees will not understand it to prohibit protected activity. *Karl Knauz Motors, Inc.*, supra 358 NLRB at 1754-1755. Moreover, the statement is sufficiently vague and is accompanied by a threat of discipline, causing employees to reasonably construe the rule to prohibit Section 7 activity, in violation of Section 8(a)(1).

[40] Paragraph 6(a)(iii) of the Amended Second Consolidated Complaint. (GCX-1(dd),(hh)).

Lutheran Heritage Village-Livonia, supra, 343 NLRB at 647.. As any lack of clarity goes against the issuer of the rule, Respondent's maintenance of the Conflict of Interest Policy should be found to be a Section 8(a)(1) violation.

9. Proposed Remedy For Policy Violations

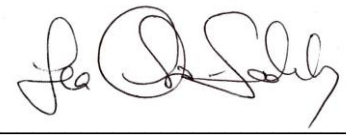
The standard affirmative remedy for maintenance of unlawful work rules and policies is immediate rescission of the offending rules; this remedy ensures that employees may engage in protected activity without fear of being subjected to the unlawful rule. *Guardsmark, LLC*, 344 NLRB 809, 812 (2005), enfd. in relevant part 475 F.3d 369 (D.C. Cir. 2007). Given that the rules and policies identified above are unlawful, Respondent should be required to rescind those rules and policies. Furthermore, the unlawful rules in the handbook have been or are in effect at Respondent's facilities nationwide. "[W]e have consistently held that, where an employer's overbroad rule is maintained as a companywide policy, we will generally order the employer to post an appropriate notice at all of its facilities where the unlawful policy has been or is in effect." *Mastec Advanced Technologies*, 357 NLRB 103, 109 (2011) (quoting *Guardsmark*, supra, 344 NLRB at 812). As the D.C. Circuit observed, "only a company-wide remedy extending as far as the company-wide violation can remedy the damage." *Guardsmark, LLC v. NLRB*, 475 F.3d 369, 381 (D.C. Cir. 2007). Accordingly, Respondent should be required to post a Notice nationwide.

V. CONCLUSION AND REMEDIES

Counsel for the General Counsel respectfully requests that the Administrative Law Judge find that Respondent violated the Act as alleged in the Amended Second Consolidated Complaint. Counsel for the General Counsel respectfully requests that the Administrative Law

Judge find that Respondent violated Section 8(a)(1) and (5) of the Act by unilaterally recouping healthcare costs from employees, unlawfully changing Morgantown employees terms and conditions by implementing a new handbook and by failing to provide the Union with requested information. Additionally, Counsel for the General Counsel requests that the Administrative Law Judge find that Respondent violated Section 8(a)(1) of the Act by maintaining unlawful overbroad policies. A proposed Notice to Employees is attached as Exhibit A and B.

Respectfully submitted,



LEA F. ALVO-SADIKY
CHRISTINA GUBITOSA
Counsel for the General Counsel
National Labor Relations Board
Fourth Region
One Independence Mall
615 Chestnut Street, Suite 710
Philadelphia, PA 19106-4413
215-597-7630
e-mail: lea.alvo-sadiky@nlrb.gov
christina.gubitosa@nlrb.gov

APPENDIX A—To Be Posted at the Southampton and Morgantown Facilities

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES GOVERNMENT

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT refuse to bargain in good faith with Teamsters Union Local 628 (the Union) as the exclusive collective bargaining representative for those of you in the following appropriate unit ("the Southampton Unit"):

> All full-time and regular part-time drivers, driver techs, in house techs, helpers, dockworkers and long haul drivers of Respondent at its Southampton, Pennsylvania location, excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

WE WILL NOT refuse to bargain collectively with the Union concerning wages, hours, and other terms and conditions of employment by unilaterally taking "retro deductions" from employees' pay for three pay periods to recoup unpaid health care contributions amounting to 1% of their straight time hours paid per week for the cost of health care coverage.

WE WILL NOT refuse to bargain in good faith with Teamsters Union Local 628 (the Union) as the exclusive collective bargaining representative for those of you in the following unit ("the Morgantown Unit") :

> All full-time and regular part-time regulated medical waste (RMW) plant workers, sharps plant workers, RMW Shift Supervisors, Sharps Shift Supervisors/quality control representatives, drivers, dispatchers, yard jockey, maintenance mechanics, Maintenance Supervisor and painters employed by Respondent at its Morgantown, Pennsylvania facility; but excluding all office employees, confidential employees, guards and supervisors as defined in the Act.

WE WILL NOT refuse to bargain collectively with the Union by distributing a Team Member Handbook to our bargaining unit employees that unilaterally changed your terms and conditions of employment.

WE WILL NOT unreasonably delay in providing the Union with information that is relevant and necessary to its role as your bargaining representative.

WE WILL NOT refuse to provide the Union with requested information that is relevant and necessary to its role as your bargaining representative.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL rescind the entire Team Member Handbook provided to Morgantown bargaining unit employees that unilaterally changed their terms and conditions of employment.

WE WILL, upon request, bargain in good faith with the Union as the exclusive bargaining representative of our Southampton Unit employees and our Morgantown Unit employees.

WE HAVE provided the Union with a copy of the vehicle backing program it requested on November 24, 2014.

WE WILL provide the Union with a copy of the information concerning its June 2, 2014 grievance regarding the 401(k) provision in the Southampton Unit that it requested through paragraphs one, two, six and eight in its letter dated September 5, 2014, and in paragraphs one, two, and three of its letter dated September 18, 2014.

WE WILL provide the Union with a copy of information concerning Respondent's recoupment of employee healthcare deductions in the Southampton Unit that it requested through paragraphs one and five in its letter dated September 11, 2014 and through paragraph three in its letter dated September 26, 2014.

WE WILL provide the Union with a copy of the Ebola presentation for the Morgantown Unit that it requested through its e-mails on November 13, 2014, November 18, 2014, and December 1, 2014.

WE WILL provide the Union with a copy of the Employee Handbook that it requested through its email on December 1, 2014.

WE WILL provide the Union with a copy of information concerning an incident involving supervisor Ron Lobb that it requested through paragraphs two through six in its email dated December 11, 2014.

WE WILL provide the Union with a copy of the Code of Conduct and Harassment Training that it requested through its email dated December 30, 2014.

WE WILL provide the Union with a copy of information concerning "TMX team" meetings with Morgantown employees that the Union requested in paragraph four of its letter dated July 15, 2015.

Stericycle, Inc.
(Employer)

DATED: _____ BY: _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal Agency created in 1935 to enforce the National Labor Relations Act. It conducts secret–ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to an agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

NLRB, 615 Chestnut Street, 7th Floor, Philadelphia, PA 19106-4404
(Telephone: 215-597-7601; Facsimile: 215-597-7658)
(Hours of Operation: 8:30 a.m. to 5:00 p.m.)
Cases 4-CA-137660 et al

APPENDIX B—To be Posted Nationwide

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES GOVERNMENT

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT maintain the following work rules in our Camera and Video Use Policy which could be understood to prohibit you from engaging in activities protected under Section 7 of the Act:

> 3.1 Team members are prohibited from taking pictures with a personal or company-issued camera or cell phone camera of any Stericycle property, operation, or equipment without the permission of their supervisor/manager.
>
> 4.1 Team members are prohibited from taking video or audio recordings with a personal or company camera, camcorder, or other device of any Stericycle property, operation, or equipment without the permission of their supervisor/manager.

WE WILL NOT maintain the following work rule in our Use of Personal Electronics in the Workplace Policy which could be understood to prohibit you from engaging in activities protected under Section 7 of the Act:

> 5.1 Team members, visitors and vendors are prohibited from using personal mobile phones or other personal electronic devices such as MP3 players, (i.e. iPods) in waste processing, warehouse, loading and unloading areas during operating hours, and any area subject to vehicle movement at any time.

WE WILL NOT maintain the following "Personal Conduct" work rule at page 30 in our Team Member Handbook which could be understood to prohibit you from engaging in activities protected under Section 7 of the Act:

> In order to protect everyone's rights and safety, it is the Company's policy to implement certain rules and regulations regarding your behavior as a team member. Conduct that maliciously harms or intends to harm the business reputation of Stericycle will not be tolerated. You are expected to conduct yourself and behave in a manner conducive to

efficient operations. Failure to conduct yourself in an appropriate manner can lead to corrective action up to and including termination. . . .

- Engaging in behavior that is harmful to Stericycle's reputation.

WE WILL NOT maintain the following Conflict of Interest work rule at page 33 in our Team Member Handbook which could be understood to prohibit you from engaging in activities protected under Section 7 of the Act:

Stericycle will not retain a team member who directly or indirectly engages in the following:

- An activity that constitutes a conflict of interest or adversely reflects upon the integrity of the Company of its management

WE WILL NOT maintain the following "Retaliation" work rule at page 10 in our Team Member Handbook which could be understood to prohibit you from engaging in activities protected under Section 7 of the Act:

All parties involved in the investigation will keep complaints and the terms of their resolution confidential to the fullest extent practicable.

WE WILL NOT maintain the following Electronic Communication Policy work rule at page 26 in our Team Member Handbook which could be understood to prohibit you from engaging in activities protected under Section 7 of the Act:

A substantial portion of our business is transacted by telephone and over the wide area network. Therefore in order to maintain the efficiency of these systems non-business usage must be restricted. Phone and data lines must be kept open for business purposes. Accordingly, personal telephone calls and email should be infrequent and brief, and limited to urgent family matters.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL modify our Camera and Video Use Policy, our Use of Personal Electronics in the Workplace Policy, and our "Personal Conduct," "Conflict of Interest," "Retaliation," "Electronic Communication" work rules contained in our Team Member Handbook so those policies and work rules will not abridge your Section 7 rights or activities, and **WE WILL** advise you in writing that the rules have been amended.

WE WILL furnish all employees at our facilities nationwide with (1) inserts for the current employee handbook that advise that the unlawful rules have been rescinded, or (2) the language of lawful rules on adhesive backing that will cover or correct the unlawful rules, or (3) publish and distribute revised handbooks that do not contain the unlawful rules.

Stericycle, Inc.
(Employer)

Dated: _____ **By:** _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal Agency created in 1935 to enforce the National Labor Relations Act. It conducts secret–ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to an agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

NLRB, 615 Chestnut Street, 7th Floor, Philadelphia, PA 19106-4404
(Telephone: 215-597-7601; Facsimile: 215-597-7658)
(Hours of Operation: 8:30 a.m. to 5:00 p.m.)
Case 4-CA-137660 et al